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THE INDIAN CONSTITUTION

A SURVEY

BY

SUDHIR KUMAR LAHIRI

AND

BENOYENDRANATH BANERJEA

THE POLITICS CLUB, CALCUTTA

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AN INTRODUCTION

TO THE

PRINCIPLES OF CIVICS

(Recommended Text-book on Politics for Intermediate Students of the University of Calcutta)

By Members of THE POLITICS CLUB

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This book contains a critical outline of the present Indian Constitution along with a brief story of its evolution, in an historical setting. The concluding section of the work furnishes to the reader a succint and up-to-date *resume* of the events leading to the formulation of the Constitutional Proposals, embodied in the White Paper, followed by a short review of the work of the Joint Parliamentary Committee.

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BOOK I

FOUNDATIONS

CHAPTER ONE

HISTORICAL BACKGROUND

India possesses a very ancient historical past. Owing, however, to lack of proper materials, based on reliable evidence, it had not, so far, been possible to prepare any continuous record of the public events of the country up to the seventh century B.C. But, with such records as were available, India's history could be traced so far back as to 3000 B.C. The archæological discoveries recently made at Harappa in the Punjab and at Mahenjo Daro in Sind bear evidence of a civilisation which appears to have flourished in a still remoter antiquity.

Ancient India

There is ample evidence that in the early periods of history there existed in India states with oligarchic or republican forms of government. The Vedic literature contains references to non-monarchical forms of government and to a system of conducting public administration by means of an assembly of the people. In the *Mahabharata* also mention is made of similar states without kings.[1]

The popular assembly was a familiar institution in the early years of the Buddhistic age.[2] The earliest Buddhist

1 *Vide* K. P. Jayaswal—*Hindu Polity.*

2 Referring to the system of government prevailing among the Sakyas, Prof. Rhys Davids says: "The administrative and judicial business of the clan was carried out in public assembly, at which young and old were alike present in their common Mote

records reveal, says Prof. Rhys Davids, the survival side by side with different grades of monarchies, of republics, with either complete or modified independence. Even as late as the time of Alexander's invasion (327-325 B.C.) popular institutions flourished in the numerous principalities of the Punjab.[3] From references made in various works it may be assumed that such forms of government existed in parts of this country even after the sixth century A.D.

The history of the Hindu Power in India may, for all practical purposes, be said to have come to an end at the close of the twelfth century A.D. A succession of brilliant rulers—Chandragupta Maurya ; his illustrious grandson, Asoka the Great ; Samudragupta, who died towards the end of the fourth century A.D. ; his famous son, Chandragupta Vikramaditya ; Harsavardhan, who ruled till the middle of the seventh century A.D.—have left marks of their uncommon powers of administration. The achievements of these rulers and of many others in every branch of civic and political life and in the spheres of literature, art and science have extorted universal admiration. An eminent English writer describes Asoka's reign as "one of the brightest interludes in the troubled history of mankind". Alone among the conquerors he was so disgusted by the cruelty and horror of war that he renounced it.[4] Some of the edicts of King Asoka

Hall at Kapilavastu. A single chief—how and for what period chosen we do not know—was elected an office-holder presiding over the sessions, and, if no sessions were sitting, over the state. He bore the title of Raja, which must have meant something like the Roman Consul or the Greek Archon".—*Buddhist India.*

3 P. N. Banerjea—*Public Administration in Ancient India.*

4 "He organised a great digging of wells in India and the planting of trees for shade. He founded hospitals and public gardens and gardens for the growing of medicinal herbs. He

emphasise the duties of the monarch and assure the people of his accessibility to them at all times of the day.

The elaborate organisation of the vast empire of the Mauryas, specially its army, the division of various activities of government into groups, under different councils, and such progressive aspects of government as the elaborate municipal administration of their capital Pataliputra ; the maintenance of a regular census ; the institution of a jail code ; and the establishment of a foreign department, for instance, excited the wonder of even such a widely-travelled person as Magasthenes, the Greek ambassador.

During all this period India was not ruled as a single country. It was, in fact, divided into numerous kingdoms and principalities. In some cases, however, very large tracts came under the sway of a single overlord. History testifies to the efficiency and skill with which such dominions were governed. Whatever the forms of government existing in those times, a very vigorous system of local government formed the basis of the political structure in India.[5]

created a ministry for the care of the aborigines and subject races of India. He made provision for the education of women. He made vast benefactions to the Buddhist teaching orders, and tried to stimulate them to a better and more energetic criticism of their own accumulated literature. For corruptions and superstitious accretions had accumulated very speedily upon the pure and simple teaching of the great Indian Master (Buddha). Missionaries went from Asoka to Kashmir, to Persia, to Ceylon and Alexandria". H. G. Wells—*A Short History of the World.*

5 "It is interesting in reviewing the past history of India to trace a remarkable continuity of policy on the part of the rulers of whatever nationality who have succeeded in welding together the great congeries of widely differing races and tongues. The main principles of government have remained unchanged throughout the ages. Such as they were under the Maurya empire, so they were inherited by the Muhammadan rulers and by their

It is significant that some writers in ancient India regarded the science of politics as the central science from which all other sciences originated. Kautilya's *Artha-shastra* refers to thirteen authors and five schools of political thought. These speculative theories as also the sacred injunctions contained in the Laws of Manu and the *Mahabharata,* etc., exercised a considerable influence in regulating the course of public affairs. The monarch according to one school of thought was bound by contract to his people. In return for the latter's obedience and payment of state-dues, the king was to make provision for the security of life and property of the people and ensure a regime of justice. The monarch's authority was upheld by another school by attributing divinity to him. In actual practice, the monarch was guided by the trend of popular opinion to a greater or less degree, as the situation demanded.

Instances of kings acclaimed as such by the people

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successors, the British. These principles are based on the recognition of a social system which depends ultimately on a self-organised village community. Local government thus forms the basis of all political systems in India." E. J. Rapson—*Ancient India.*

"The freedom and general happiness attained by the people of Great Britain with the help of Parliamentary institutions and the richest revenues of the world can hardly be compared with that which Indians within the Aryan pale enjoyed both before and after the fifth century A.D.—the time which we regard as our Dark Ages, and theirs. The Indo-Aryan constitution, built up by the highest intelligence of the people upon the basis of the village communities, and not wrung from unwilling war-lords and land-lords by century-long struggles and civil wars, secured to the Indian peasant-proprietor not only the ownership of the land, but very considerable powers of self-government. The powers of the Central Government, though they might often be abused were at least delegated to it by the people themselves and limited by unwritten laws which by common consent were given a religious character." E. B. Havell—*Aryan Rule in India.*

are not rare,[6] and women were not absolutely excluded from succession. The system of government was organised on very scientific principles. The administrative system was generally composed of four distinct elements, *viz.*, the king, the ministers, the council and a highly organised class of officials.[7]

In Bengal, according to a Sanskrit work called *Manjusri Mulakalpa,* after King Sasanka a republican government existed for some time. The famous Bengali king Gopala was an elected monarch, and even before him a popular Sudra leader was elected king and ruled for 17 years. It shows that "Bengal in the eighth century had freed herself from the law of caste and the Vedic theory of birth superiority and that Bengal had anticipated in 700 A.D. Govinda Singh and Rammohun Roy, Dayananda Saraswati and Gandhi".[8]

Possibly the most vigorous development of community life was attained in Southern India. The administrative system of the Cholas, for instance, adopted the village community, composed often of a single village or oftener of a group of villages, as the unit of government. The assemblies of these village communities, subject to some supervision by divisional officers, were practically sovereign in all the departments of rural administration. Several of these village unions (*Kurram*) formed a district, and a number of the divisions formed by such districts

[6] At least in two cases kings were deposed by the people. King Brihadratha, the last Maurya emperor, according to Bana, the famous author of *Harsa-Charita,* was deposed for 'being weak in keeping his coronation oath'. For the offence of parricide king Nagadasaka made room for the first king of the Sisunaga dynasty.

[7] R. C. Majumdar—*Ancient Indian History and Civilisation,* Bk. II, ch. IV.

[8] K. P. Jayaswal in *Modern Review,* August, 1933.

constituted a province (*Mandalam*), under a viceroy selected from the royal family. The Chola empire was divided into six such provinces.

The village communities of southern India, of which minute details are now available, in some cases, possessed extensive powers and exercised many beneficent functions, some of them yet to be emulated by modern municipalities.[9]

Medieval India

It was in 711 A.D. that Muhammad bin Kasim set foot on the soil of Sind and conquered that part of Indian territory. This was, however, more or less, a temporary occupation and was followed by the raids of Subaktagin, the Sultan of Ghazni, and his son Mahammad Ghazni. The country, however, gradually came under Mahomedan supremacy from the date of the decisive defeat of Prithwiraj and his Hindu confederates by Sahabuddin Ghori at the second battle of Tarain (1192).

After incessant struggle between contesting Mahomedan dynasties, Hindu rulers joining one party or other or fighting with both, large tracts of the country came under the sway of the Mughal house of Timur. During these years at least two rulers Alauddin Khilji (1296—1316) and Sher Shah (d. 1545) showed consummate administrative skill. But it was under the Mughals, especially under Akbar the Great (1556—1605), that the country reached the summit of glory during Mahomedan rule[10].

9 S. K. Aiyangar—*Ancient India* and *Hindu Administrative Institutions.*

10 In his brilliant monograph on *Akbar,* (1932), Laurence Binyon, after describing how the great Mughal Emperor consolidated his conquests, writes :—"His greater achievement as a ruler was to weld this collection of different states, different races,

Decay and disruption may be said to have set in at the close of the rule of Aurangzeb (1658—1707). The rise of the Mahratta Power (1718—1818) under the genius of Sivaji, and of the Sikh Power (1803—1849) under the military prowess of Ranjit Singh, furnished short interludes in Indian history, contributing new experiments in government.

Inspite of the democratic character of their religion, Muslims in India introduced a system of government based on military models and needs. The Mughal rule was a centralised autocracy. Yet, as has been pointed out, the people endured Mughal rule in so far as it came to be based on religious toleration, social freedom and respect for village autonomy. This implied on the one hand a comparatively narrow scope of state-activity and on the other the enjoyment by the rural communities of a limited form of self-government in their spheres.

The emperor used to have a council for purposes of consultation, consisting of the *Vakil* or chancellor and a number of departmental heads. The central government exercised control over provincial administrations by devising a series of checks on the governor's powers.

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different religions, into a whole. It was accomplished by elaborate organisation -still more by the settled policy which persuaded his subjects of the justice of their ruler. Akbar's conceptions were something new in the history of Asiatic conquerors. Though a foreigner, he identified himself with the India he had conquered. And much of his system was to be permanent. The principles and practices worked out by Akbar and his ministers were largely adopted into the English system of government."

Sir Jadunath Sarkar in his *Mughal Administration* says: "The Mughal system at one time spread over practically all the civilized and organised parts of India. Nor is it altogether dead in our own times. Traces of it still survive, and an observant student of history can detect the Mughal substructure under the modern British Indian administrative edifice".

Such powers were applied through limitation of tenure, transfer of officers and the appointment of some of the subordinate responsible provincial officers from the head-quarters. Moreover, the emperor by means of imperial tours, personal dispensation of justice at the centre, public appearances on specified occasions, etc., attempted to co-ordinate the administrative machinery, so far as circumstances permitted.[11]

The centralised administration lasted for a little over two centuries. The adoption, by Muslim rulers, of the country as their own, led to the evolution of a common language (Urdu) and a composite civilisation, arising out of the contact of Hindu culture with that of Muslim immigrants.

In the Deccan, the Hindu empire of Vijayanagar (1336—1646) embodied the political and social aspects of Hinduism as practised in the South. Among its rulers was Krishna Raya (1509—29) described as the 'greatest of the South Indian monarchs'. He was a contemporary of King Henry VIII of England. Paes, a Portuguese traveller, has left an 'obviously truthful' account of Krishna Raya's court.[12] After describing the magnificence of the court and the capital, and the permanent army of a million troops, Paes notes that the empire was divided into 200 districts, each under a feudal noble. The government was strong and well-organised, and art and architecture flourished as never before.[13] The King was assisted by a council composed of ministers, provincial governors, military commanders, eminent theologians and *litterateurs*.

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11 Beni Prasad—*History of Jahangir*, Chap. 4.
12 V. A. Smith—*Oxford History of India*, Bk. V, Ch. 3.
13 Sewell—*A Forgotten Empire* and H. Krishna Shastri in *Annual Rep. A. S. India* (1907-9 and 1911-12).

The village moots managed local affairs through hereditary officers, maintained either by royal grants or contributions from the cultivators.[14] The Hindu tradition of government, thus, continued to exist in southern India.

At a later period, Sivaji, after consolidating his position, designed his administrative departments on early Hindu models. The government of his kingdom was conducted by the Raja aided by a council of eight ministers—the *Ashta Pradhan*—of whom the chief was the Peshwa or prime minister. This arrangement was reproduced in the district administration also.[15] The Mahratta army and navy, and the civil administration and the revenue system of Sivaji, considering the unsettled conditions of his territories, have been regarded as remarkably efficient by competent observers.

Under the East India Company

England gained her first foothold in India at the dawn of the seventeenth century A.D., when the East India Company, a commercial and trading concern, began its operations in this country. The Company received a Royal Charter which gave it very large powers including a monopoly of trade,[16] and the right to acquire territory and to make regulations for the government of such areas.

14 Ishwari Prasad *History of Medieval India*, Ch. 15.

15 S. N. Sen—*Administrative System of the Marhattas*.

16 Whether this monopoly granted without the consent of Parliament was legal was decided in favour of the Company in 1685 in the case of the *E. I. Co.* vs. *Sandys*.

In 1693 Parliament passed the famous resolution declaring that all British subjects had an equal right to trade in the East Indies. The Company, however, continued to keep the eastern trade closed to outsiders. Gradually, Parliament, in renewing the charters granted to the Company, limited its trading rights and imposed duties, necessitated by the increasing administrative responsibilities of the Company.

Although several European powers entered into competition in the struggle for supremacy in India, after protracted warfare extending over a lengthy period, the British ultimately came out victorious.

The grant of the *Dewani* of Bengal, Bihar and Orissa to the Company by Emperor Shah Alam in 1765 was a landmark in the consolidation of British power in India. This practically marked the beginning of British territorial sovereignty.[17] The double government under Clive, and the chaos and corruption[18] in administrative and trading methods gave rise to criticisms. Further, the fabulous wealth acquired by British traders in India along with the vulgar display that they made of their riches aroused jealously in many quarters in England. At last Parliament was induced to take measures for regulating the administration of the territories by the company. The secret enquiry into its affairs by a Parliamentary Committee (1772) and the request of the Company for pecuniary assistance (1773) resulted in two Acts, one granting a loan of £1·4 millions with safeguards, and the other the famous Regulating Act. Lord North's Regulating Act of 1773 was enacted with a

17 The Company, of course, did not want to assume the sovereignty directly. "Clive seems, in 1756, to have desired the *Diwanni* of Bengal rather than any territorial cession, which could have been obtained just as readily. It placed the Company in a strong tactical position alike as regards foreign powers and as regards the government at home" (Dodwell on "The Development of Sovereignty in India" in the *Cambridge History of India*, Vol. V, Ch. XXXII).

18 Reports of Parliamentary Committees appointed after 1769 made the calculation that between 1757-66 the Company's servants received as presents from Bengal a sum of £2,169,605. This was apart from such acquisitions as Clive's *Jagir* valued at £600,000, the gains made from private trade by the company's servants by abusing privileges granted to the company and £3¾ millions paid as "compensation for losses incurred" to the officers of the company.

view to introducing a system of effective control and supervision over the Company's policy and administration. This was the first of a series of parliamentary enactments regarding India.

Hitherto the three Presidencies of Bengal, Madras and Bombay had been independent of one another. With the passing of the Regulating Act, Bengal was given supreme power over the entire country with a Governor-General and four Councillors. They also administered the Presidency of Fort William (Bengal). A supreme Court was also set up in Calcutta to administer law. The machinery in England for the administration of the affairs of the Company was, however, allowed to continue without any important change.

The arrangement introduced by the Regulating Act, which was halting in its principles and ambiguous and indistinct in specifying the jurisdictions of the Supreme Court, the Governor-General, and the Governor-General's Council, proved unworkable. It was mainly through the instrumentality of Sir Philip Francis, a powerful antagonist of Warren Hastings in the Governor-General's Council, that the unfairness of the Company's administration was brought to the fore.[19] After some controversy the measure known as Pitt's India Act was passed in 1784.

19 A Parliamentary Committee presided over by Edmund Burke, considered the administration of justice in India, and changes were introduced in conformity with the reports of this Committee, submitted from time to time from 1781 onwards. A secret committee under the chairmanship of Dundas also considered the state of British Government on the Carnatic coast. The reports of the two committees were far from complimentary to the administration by the Company. (Ilbert—*Government of India*, pp. 60-61).

Charles James Fox in 1783 presented a drastic bill proposing the suspension of the Company's charter for four years and providing for the management of the affairs of the company

Under the provision of this Act a Board of Control,[20] under the official style 'The Commissioners for the Affairs of India', consisting of the Chancellor of the Exchequer, a Secretary of State and four Privy Councillors was established in England.[21] The President of this body gradually centralised vast powers in his hands and became the forerunner of the office of the Secretary of State for India. The President was almost always a member of the Cabinet and changed with the party in power. This brought all the operations of the East India Company under the complete control of the Board. The indirect influence exercised by the presence of two Cabinet Ministers at least, eventually led to the establishment of supremacy of the British Parliament over India. The Board could disapprove or modify the despatches of the Directors of the Company and even secret orders had to be communicated to the Board.

The administration of each of the three Presidencies was vested in a Governor and three Councillors including the Commander-in-Chief of each Presidency.

With the passing of the Charter Act of 1833 the East India Company was compelled to close its commercial business. It thus became a purely political and administrative body, holding its territories, which had enormously expanded, in trust for the crown.

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by seven commissioners nominated by Parliament. The bill though passed by the House of Commons was thrown out by the House of Lords at the King's behest

20 The function of the body was "to superintend, direct and control all acts, regarding the civil and military government of Indian territories." Cp. Section 2 (2) of the Government of India Act, 1919.

21 The Commissioners did not receive any pay till 1793, when the payment of the members and staff of the Board was saddled on Indian revenues.

CHAPTER TWO

EVOLUTION OF BRITISH INDIAN POLITY (1833—1917)

A special feature of British rule in India is that the destinies of the country are controlled and guided from a distance of thousands of miles. The British in India, unlike the Mahomedan rulers, have never made the country their adopted home. Nor has any serious attempt been made to model the constitutional and administrative structure on indigenous lines. In fact, an examination of the process of evolution of Parliamentary control over Indian administration shows that not only are all the powers and privileges of the Government of India derived from the British Parliament, but that the closest supervision is maintained from Whitehall over Indian affairs.

During the early days of the East India Company such control used to be exercised indirectly through the issuing of charters, which defined the powers of the Company. With the development of popular control over the government of England, Parliament tried more and more to regulate the activities of the Company. Further, since the conferment of the *Dewani*, the need for such supervision was regarded as all the more imperative by the British Government. Besides parliamentary enactments, beginning with the Regulating Act of 1773, Committees were set up to investigate into Indian affairs from time to time. In the Board of Control, again, Parliament found an instrument for closer and more effective superintendence. Whereas the Committees and debates on India Bills were held at intervals, the control exercised by the Board was more or less constant and continuous.

The Charter Act of 1833, as we have noted, explicitly made the Company a political body responsible for the good government of the territories in India, which were regarded as being held by them on behalf of the Crown. According to the provisions of the Act the direction of the entire civil and military administration and the sole power of legislation were vested in the Governor-General in Council of India. This was the first time when the Governor-General in Council was styled "of India." For purposes of law-making only, a Law Member was added to the Council of the Governor-General. It was also enacted for the first time that no Indian shall be "disabled from holding any Place, Office, or Employment" under the Company "by reason only of his Religion, Place of Birth, Descent, Colour or any of them."

The Charter Act of 1833 required only one member of the Board of Control, *viz.*, the President, to be nominated. In the absence of provision to nominate any other member, it became a one-man Board after 1841.

In 1853, when the Charter Act was renewed, not for 20 years, as on previous occasions, but, significantly enough, "until Parliament shall otherwise provide", it was specified that a third of the membership even of the Court of Directors of the Company was to be nominated by the Crown. Bengal was made a separate province under a Lieutenant Governor and the Government of India assumed the character of a central controlling authority. The Act also gave India her first Legislative Council of 12 members, which was, however, a purely official body. Its meetings were open to the public and the proceedings were officially published. The system of nomination to the Indian Civil Service was replaced by a

system of open competitive examination held in London, the first regulations of which were drawn up by a committee presided over by Macaulay in 1854.

In the course of the debate in the House of Commons, over the renewal of the Charter in 1853, John Bright advocated the assumption of the government of India directly by the British Crown. He characterised the past history of India as "a history of revenue wasted and domestic improvements obstructed by war". The system of double government, in his opinion, had "introduced an incredible amount of disorder and corruption into the State and poverty and wretchedness among the people". It was according to him, "a system of hocus-pocus" which "deluded public opinion, obscured responsibility and evaded parliamentary control".

The Indian Mutiny (1857-58) eventually brought about the transfer of the Government of India from the East India Company to the British Crown.

In December, 1857, Lord Palmerston, as Prime Minister, announced that a bill embodying the principle of direct control would soon be placed before Parliament. This evoked a spirited protest from the Court of Directors of the East India Company whose memorandum was drafted by John Stuart Mill, an employee of the Company. It characterised the proposed transfer of a "semi-barbarous dependency" to the Crown, as "a folly and a mischief".[1] After acrimonious debates and replacements of draft Bills, consequent upon change of Governments, the bill drafted by Lord Stanley was finally passed as the Government of India Act, 1858.

The Queen's proclamation to the people of India, on the assumption of the Government of India by the Crown, said to have been drafted by John Bright, was read by

[1] Memorandum on the Improvements in the Administration of India during last 30 years and petition of the East India Company to Parliament (1858).

Lord Canning on the 1st November, 1858, at Allahabad. The proclamation, among other things, declared:

"We hold ourselves bound to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects. And it is our further will that, so far as may be, our subjects of whatever race or creed, be freely and impartially admitted to office in our service, the duties of which they may be qualified by their education, ability and integrity duly to discharge.

"When, by the blessing of Providence, internal tranquillity shall be restored, it is our earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement and to administer the government for the benefit of all our subjects resident therein. In their prosperity will be our strength, in their contentment our security, and in their gratitude our best reward".[2]

The Proclamation was described by some as the Magna Charta of the people of India,[3] and by others as unnecessary and inexpedient as "no change whatever of principle was required".[4] The Governor-General's short Proclamation accompanying the Queen's was described by a contemporary writer as dissonant with the latter, as the former summoned the faithful to co-operation and was calculated to "exact a loyal obedience" from India's millions. The writer protested against the Queen's name being forged to promises made only to be broken later by the authorities in India.[5]

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2 For the text of the Proclamation reference may be made to P. Mukherji's *Indian Constitutional Documents*, Vol. I, pp. 431-35. The Proclamation was issued by Victoria as Queen of England. She assumed the title of *Empress of India*, after the passing of the Royal Titles Act, in 1876, by the British Parliament.

3 *The Company and the Crown* by Thurlow, Private Secretary to Lord Elgin, p. 245.

4 Duke of Argyle—*India under Dalhousie and Canning.*

5 J. M. Ludlow—*Thoughts on the Policy of the Crown towards India.*

The Queen's Proclamation announcing the resolve "for diverse weighty reasons" to take up the Government of "the territories of India, heretofore administered in trust for us by the Honourable East India Company", introduced a new order, if not in fact, at least in law.

Since then, it has been "open to Parliament to exercise control either by means of legislation, or by requiring its approval to rules made under delegated powers of legislation ; or by controlling the revenues of India; or by exerting its very wide powers of calling the responsible Minister to account for any matter of Indian administration".[6]

After 1858, however, Parliament omitted to institute such regular enquiries into the Indian administration as used to take place at the time of renewal of charters.

According to the provisions of the Indian Councils Act of 1861, the Governor-General's Legislative Council was reinforced by not more than twelve and not less than six members, half of whom were to be non-officials.[7] The Council was empowered to deliberate only on matters placed before it. The members could not enquire into grievances, call for information or examine the conduct of the executive. The Act also restored to Madras and Bombay powers of legislation, subject to the approval of

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6 *Report on Indian Constitutional Reforms* (1918), para. 33.

7 The observations made by Sir Bartle Frere in 1860 furnish one explanation of this step. He said : "The addition of the native element has, I think, become necessary owing to our diminished opportunity of learning through indirect channels what the natives think of our measures, and how the native community will be affected by them. . . The durbar of a native Prince is nothing more than a council very similar to that which I have described. To it under a good ruler all have access, very considerable license of speech is permitted, and it is in fact the channel from which the ruler learns how his measures are likely to affect his subjects, and may hear of discontent before it becomes disaffection."

the Governor-General. A nominated non-official element in the provincial Councils was provided.[8]

The Indian Councils Act of 1892 was a more liberal measure. Public opinion expressed through the Indian National Congress, founded in 1885, and other public bodies, had demanded an advance. The Government of India felt that a change was needed to supply the Councils with local knowledge which was lacking and also to give them more liberty and power. The Act gave the Councils the right of asking questions and discussing the budget, though voting on it was not allowed. It authorised the "recommendation" of non-officials as members of Provincial Councils by such bodies as municipalities, district boards, etc.[9] The Governor-General's Legislative Council was enlarged by sixteen additional members, of whom four represented the four Provincial Councils, one the Calcutta Chamber of Commerce, besides five non-officials and six officials nominated by the Governor-General.[10]

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8 Bengal got a provincial Legislative Council in 1862, and the North-West Provinces and Oudh (the present United Provinces of Agra and Oudh) in 1886. The Punjab and Burma were each given a Legislative Council in 1897, Behar and Orissa in 1912, Assam in the same year, and the Central Provinces in 1913. After the partition of Bengal a separate Council was created for the new province of East Bengal and Assam in 1905, which was automatically abolished after annulment of the partition.

9 In fact, a method of indirect election was introduced by the famous 'Kimberley clause'. The Cabinet was against the introduction of elective principles, but in as much as the nominations of the recommending bodies were accepted later by the Government of India, as a matter of course, a large number of non-official seats became elective. The credit for this should largely go to the political sense which inspired Lord Lansdowne's Government in demanding powers to resort to some form of election where conditions favoured it.

10 Lord Dufferin who as Viceroy had initiated the proposals, later embodied in the Act of 1892, significantly declared: "Our

The agitation carried on by the Indian National Congress, the favourable working of the Act of 1892, the unrest in the country mainly caused by the partition of Bengal, the Universities Act of 1904 and the Russo-Japanese war of 1904-5, and the public attention in India and England bestowed on Indian affairs, resulted in the changes introduced in 1909 at the instance of John Morley, Secretary of State for India, and Lord Minto, Governor-General of India. Lord Morley expressed his agreement with Lord Minto's view that representative government in the western sense of the term was not suitable for India. The Morley-Minto reforms thus were not intended to introduce any fundamental change in the principle underlying the system of government. The reforms were an attempt to blend the principle of autocracy with the principle of constitutionalism. Lord Morley, it may be mentioned, regarded the step as the ultimate one in

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plan may be briefly described as a plan for the enlargement of our provincial councils, for the enhancement of their status, the multiplication of their functions, the partial introduction into them of the elective principle, and the liberalization of their general character as political institutions. From this it might be concluded that we were contemplating an approach to English parliamentary government, and an English constitutional system. Such a conclusion would be very wide of the mark".

Another supporter of this step, Sir Charles Aitchison, formerly Lieutenant Governor of the Punjab and then a member of the Viceroy's Executive Council observed: "Obviously it is an easier matter to popularize the local than the Imperial Council. Decentralization is therefore an essential preliminary. There is no room for local councils while the Government of India and the Secretary of State retain practically everything of interest and importance and even much that is trifling and unimportant, in their own hands. If councils are to be of any use, a sphere must be provided within which their influence can be felt and their opinion will be potent in the settlement of affairs. . . . The true use of councils, in my opinion, is as consultative bodies to help Government with advice and suggestion".

associating Indians in the task of the government of their own country.

As soon as the proposals for reform were mooted, a deputation of Mahomedan leaders led by the Aga Khan waited on the Viceroy (1st October, 1906). They urged that the position of Mahomedans "should be commensurate not merely with the numerical strength but also with their political importance and value of the contribution which they made to the defence of the Empire". The deputation was subsequently characterised by Maulana Mahomed Ali as "a command performance". However, it was able to secure separate electorates for the Mahomedan community.

The Morley-Minto scheme, made public in December 1906,[11] took shape as the Indian Councils Act of 1909. The Act provided for a Governor-General's Legislative Council with 60 additional members. Of these 28 only were to be officials and 27 seats were elected. In the enlarged Provincial Councils official majorities were abandoned, but Bengal got a clear elected majority. Power was given to members to move resolutions on matters of general public interest, to discuss the annual budgets more freely and to put supplementary questions. Besides the baneful system of separate Mahomedan electorates, the principle of indirect election was introduced through a system of representation by classes and interests.[12] A special electorate for the large landowning

11 Although Mr. Gokhale declared that it had saved India from drifting "towards what cannot be described by any other name than chaos," an influential and increasingly large section of people maintained an attitude of cold acquiescence towards it. Moreover, Morley's intention of signalising the completion of the scheme by some noble act of clemency, *viz.*, the release of political deportees, though backed by the Cabinet, could be given effect to a year later because of the opposition of Lord Minto and his Council.

12 These steps have been characterized as "the retort courteous of the bureaucracy to the middle class, who clamoured for

classes on the basis of a high franchise was also created. Under the reforms of 1909 the constituencies were very small, the largest consisting of 650 persons only.

In 1912, when Lord Hardinge was Viceroy, Lord Curzon's partition of Bengal was annulled reconstructing Bengal as a separate province with the status of a presidency under a Governor, as in Bombay and Madras, and creating the new Province of Behar, Orissa and Chota Nagpur with a Council. Assam was converted into a Chief Commissionership and the capital of India was transferred from Calcutta to Delhi.[13]

The first act of the Reformed Council was to pass the Press Act in 1910. A year later the Seditious Meetings Act was passed. The war also brought in its train more than the usual curtailment of civil liberties. The Montagu-Chelmsford Report analysed the position after the Reforms of 1909 as follows: "The new institutions began with good auspices and on both sides there was a desire to work them in a conciliatory fashion. But some

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the reform of the Councils and got it. It seriously curtailed the power which they exercised over the elections under the statute of 1892, and the whole trend of the Regulations of 1909 was to assign to them a back seat in the new system that was largely their creation". Sir Surendranath Banerjea—*A Nation in Making*, pp. 123-25.

13 In the Coronation Durbar Despatch from Lord Hardinge's Government to the Secretary of State for India (25th August, 1911) occurs a very significant paragraph giving the *raison d'etre* of decentralization and provincial autonomy. It said: "The only possible solution of the difficulty would appear to be gradually to give the Provinces a larger measure of Self-Government, until at last India would consist of a number of administrations, autonomous in all provincial affairs, with the Government of India above them all, and possessing powers to function in matters of Imperial concern. In order that this consummation may be attained, it is essential that the Supreme Government should not be associated with any Provincial Government. The removal of the Government of India from Calcutta is, therefore, a measure which will, in our opinion, materially facilitate the growth of Local Self-Government on sound and safe lines".

of the antecedent conditions of success were lacking. There was no general advance in local bodies; no real setting free of provincial finance; and in spite of some progress no widespread admission of Indians in greater numbers into the public service. Because the relaxation of parliamentary control had not been contemplated the Government of India could not relax their control over local Governments. . . . Again and again a local Government could only meet a resolution by saying that the matter was really out of its hands. . . . All this time the national consciousness, and the desire for political power, were growing rapidly in the minds of educated Indians; and the Councils with their limited opportunities proved to be an insufficient safety-valve. . . . . But with the disillusionment about the reformed council . . . the line taken by prominent speakers has been to belittle the utility of the councils, if not to denounce them as a cynical and calculated sham."

As the responsibility for administration was not shared with popular representatives to even a limited extent, the powers of criticism and asking questions conferred on the Councils could not be used with the attitude "as comes from the prospect of having to assume office in turn under a parliamentary form of Government". The whole scheme, in the opinion of the authors of the Montagu-Chelmsford Report, was, "the final outcome of the old conception which made the Government of India a benevolent despotism (tempered by a remote and only occasionally vigilant democracy) which might as it saw fit for purposes of enlightenment consult the wishes of its subjects." "Responsibility", they observed, "is the savour of popular government, and that savour the present Councils wholly lack".[14] The need for a liberal measure of constitutional advance was felt as imperative by progressive and farseeing public men, both in England and in India.

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14 *Montagu-Chelmsford Report* (1918), p. 52.

LORD IRWIN ON RESPONSIBLE GOVERNMENT

In a striking paper on the Indian problem that Lord Irwin contributes to a recent work,[15] the ex-Viceroy of India attempts to interlink the development of responsible government throughout the British Empire. Lord Irwin claims that every great step in England and in the Dominions in this direction has been accompanied at a greater or lesser interval by a corresponding advance in India. The Charter Act of 1833 was, he says, the fruit of the first reformed Parliament of England. "Lord Durham's epoch making report, worthily implemented by his son-in-law, Lord Elgin, had made responsible self-government in Canada a reality in 1848. During the next ten or twelve years the same form of Government was extended to all the major British colonies except one or two whose material development was not sufficiently advanced to enable them to receive it". These changes had, in his lordship's view, their effect in India by 1861, when on the termination of his service in Canada, Lord Elgin assumed the Viceroyalty of India.

Lord Irwin establishes an interconnection between the stirrings of life in England in the 'sixties, 'seventies, and 'eighties, when the slow battle for the enfranchisement of the working-classes in town and country was being fought and won and Mr. Gladstone inaugurated his campaign for Home Rule in Ireland, and the Indian Councils Bill of 1892. He further points out that the Morley-Minto reform 'was the work of the Parliament that extended responsible government to the erstwhile Boer Republics of the Transvaal and Orange Free State'. Lord Irwin considers that none of these connections were accidental; they were evidence of a common law of political progress for all parts of the British Empire, a law which, he claims, "operated generally and impartially in each instance as circumstances dictate and justify".

In conclusion, Lord Irwin invites pointed attention to the fact that within a decade of Lord Morley's declaration that no step towards responsible government was being taken, "the war, and India's share in it, had wrought so great a change both upon her circumstances and upon public opinion outside India that Mr. Montagu's famous declaration on behalf of the Imperial Govern-

15 *Political India*, Ch. I, (Oxford University Press, 1933).

ment of that day formally made responsible self-government for India within the Empire a goal of British purpose". One, however, pauses and wonders at the very tardy and inadequate application to India of the "common law of political progress for all parts of the British Empire", to which his lordship refers. The march of events in India does not justify the claim that Lord Irwin is bold enough to make that British statesmen have not hesitated to apply the principle of responsible government to India as she had become ready to accept its obligations. We are here reminded of the memorable observation made by John Redmond with reference to Ireland a quarter of a century ago. The Irish statesman then said that the reforms that England proposed for Ireland were always late and that they invariably failed to adopt the only course, namely, trusting the people, that could help them to solve the Irish problem.[16]

16 *Irish Orators and Oratory*, (Every Irishman's Library) London.

BOOK II

CONSTITUTIONAL STRUCTURE

CHAPTER THREE

PRINCIPLES OF THE MONTAGU-CHELMSFORD REFORMS

The system of government that had so long prevailed in British India had been based on autocracy in a more or less qualified form. The Morley-Minto Councils gave wider powers of consultation and discussion with Indian opinion than had hitherto been the case. But the power and influence that the reforms gave to Indian opinion was in so attenuated a form that the system proved to be wholly ineffective. This led to an increasing demand on the part of a large section of the people for the introduction of the principle of self-government in the Indian constitution.

At such a moment the war was announced. The signal service that India rendered in helping the British to win the war is recorded in a large number of official documents, as also in the authoritative pronouncements of many responsible British statesmen. They acknowledge in the most eloquent terms India's unexampled contributions to the war in men and money and in numerous other ways. The events of the great war were day after day broadcasted all over the world, and their echoes and re-echoes stirred the hearts of men as had never been the case before. All this, combined with the impressive declarations relating to the noble and lofty aims and objects of the war, very naturally aroused the highest expectations about the future.

As early as October, 1916, nineteen elected members[1] of the Imperial Legislative Council addressed a memorandum to the Viceroy on the post-war reforms. It referred at the outset to the war which was declared to have been undertaken "in defence of the liberties of weak and small nationalities." India, the memorandum said, had borne her part in the struggle and could not remain unaffected by the new spirit of change for a better state of things. Expectations had been raised in the country and hope held out that after the war the problem of Indian government would be looked at from a new angle. If after the termination of the war, the position of India practically remained what it was before, the beneficent effects of participation in common danger, overcome by common efforts, would disappear, leaving no record behind save the painful memory of unrealised expectations. The Government must, the memorandum urged, go to the root of the matter. The people must have a real voice, and their participation in the government of the country must be effective. Further, the existing irritating disabilities should be removed, as these indicated want of confidence in the people, and placed them in a position of inferiority and helplessness.

Among the measures suggested in the memorandum were, (1) half the members of the Imperial and Provincial Executive Councils to be Indians elected by the representatives of the people, (2) substantial elected majority in all Legislative Councils, (3) fiscal autonomy and the right of voting the supplies, (4) abolition of the Council of the Secretary of State, (5) provincial autonomy, (6) a position similar to that of self-governing dominions in any scheme of Imperial Federation, and (7) right to carry arms, enlistment in territorial units and eligibility for Commissions in the army on conditions similar to those for Europeans.

Closely following upon this, the Indian National Congress at its session at Lucknow, formulated a scheme of reforms, on almost similar lines. This was also adopted by the Muslim League which met at the same place. A scheme of communal

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1 The signatories included Maharaja Sir Manindra Chandra Nandy, Messrs. D. E. Wacha, Madan Mohan Malaviya, Tej Bahadur Sapru, Bhupendra Nath Basu and M. A. Jinnah.

representation was embodied in a Pact between the Congress and the League which came to be known later as the "Lucknow Pact". A resolution on self-government was adopted asking for a proclamation by the King announcing the intention of the British Government to confer self-government on India at an early date. It urged the immediate grant of the transitional steps embodied in the Congress-League Reforms Scheme and claimed that India should be 'lifted from the position of a Dependency to that of an equal partner in the Empire with the Self-governing Dominions.'[2] At this time Mrs. Besant, with the aid of the Home Rule League that she founded, carried on an agitation for Indian home rule with very great vigour, both in India and in the United Kingdom.

On the 20th August, 1917, the Rt. Hon. Mr. E. S. Montagu, Secretary of State for India, made an announcement in the House of Commons that the policy of His Majesty's Government was that of "the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government[3] in India as an integral part of the British Empire". The terms of the announcement were settled by a coalition Cabinet and Parliament is said to have accepted it as "a pledge and assurance offered to India by Britain herself".

Soon after this Mr. Montagu visited India. As a result of the enquiry and deliberations held by Mr. Montagu and Lord Chelmsford, Viceroy and Governor-General of India, a scheme of reforms was prepared.[4]

2 The resolution was moved by Surendranath Banerjea and supported by B. G. Tilak and Mrs. Besant.

3 It was Lord Curzon who inserted this reference to "responsible government", (Vide Ronaldshay's *Life of Curzon*, Vol. III, p. 167).

4 Lord Donoughmore, Sir F. W. Duke, Messrs. Bhupendranath Basu and Charles Roberts also formed part of Mr. Montagu's party.

This was embodied in the Report on Indian Constitutional Reforms drawn up by them, which was published on 8th July, 1918. After detailed discussions by Committees and the British Parliament the scheme with certain modifications was adopted and was incorporated in the Government of India Act 1919. The Act came into operation early in 1921.[5]

The Report on Indian Constitutional Reforms laid down four governing formulæ to be embodied in the new constitutional structure. These are: "The process will

5 The Montagu announcement, coming as it did after the arrest of Mrs. Besant and the adoption of other repressive measures, was received with some amount of coldness by certain sections. The publication of the Montagu-Chelmsford Report did not arouse much enthusiasm as the proposals fell short of the expectation that had been aroused in the public mind. Mr. Tilak pronounced them as 'entirely unacceptable' and Mrs. Besant characterised the scheme as unworthy to be offered by Britain and received by India. The Liberals kept themselves aloof from the special session of the Indian National Congress held at Bombay under the presidency of Mr. Hasan Imam to consider the Report on Indian Constitutional Reforms. The session discussed the Report in detail and pronounced the proposed scheme as unacceptable. The Liberals henceforth began to form themselves as a separate political party and held their first conference at Bombay on November, 1, 1918.

The Rowlatt Bills, prepared on the recommendation of the Sedition Committee (1918), contained provisions enabling the Government to set aside the regular legal procedure and interfere with personal liberties. These were placed on the Statute Book inspite of the united opposition of non-official Indian members in the pre-reform Imperial Legislative Council. The passing of the Rowlatt Acts was followed by a widespread agitation under the guidance of Mr. M. K. Gandhi. The adoption of the Rowlatt Bills, the Jallianwallabagh shooting, the introduction of Martial Law in parts of India, the Hunter Committee's halting report, etc., widened the gulf between the people and the Government. Ultimately the nationalists headed by Mr. Gandhi adopted the non-co-operation programme embodying the triple boycott of Councils, foreign goods and educational institutions, at the special session of the Congress held in Calcutta in 1920. It was in this atmosphere that the new constitution was ushered in with the lukewarm support of a small section of Indian publicmen.

begin in local affairs which we have long since intended and promised to make over to them ; the time has come for advance also in some subjects of provincial concern ; and it will proceed to the complete control of provincial matters, and thence, in the course of time and subject to the proper discharge of Imperial responsibilities, to the control of matters concerning all India."[6]

It has been pointed out that in three cardinal points the principles at the base of the Reforms of 1919 struck at the essentials of the previous system. "Authority instead of being concentrated at the Centre, was to be in large measure devolved on the provinces, the opportunities of the Central Legislature for influencing the Government of India were to be increased, the control of Parliament over the whole of Indian government was to be modified by marking out a portion of the provincial field in which it would be no longer exercised."[7]

The Bill which was presented to Parliament represented the result of discussions which had taken place between the provincial, central and Imperial governments on the basis of the Report on Indian Constitutional Reforms. The Joint Select Committee, however, made a few important alterations in the details of the Bill.[8] It is significant that the Committee recommended the inclusion of the whole of the relevant portion of the announcement in the Preamble, especially the portions which emphasised that the evolution towards the goal must be gradual, that the responsibility for determining the pace and time of advance rested on Parliament alone, and that of the increasing association of Indians. The increasing association of Indians, in the opinion of the Joint Select Committee, was to be conditional upon the power

6 *Montagu-Chelmsford Report,* para 179.

7 Report of the *Indian Statutory Commission* (1930), Vol. I, Part II, Chap. II.

8 For instance, the Montagu-Chelmsford Report suggested that the Assembly shall be empowered only to pass certain recommendatory resolutions on the budget, but the Joint Committee inserted a new provision for the submission of the Budget to the vote of the Assembly.

to appoint Europeans to posts for which the latter were specially qualified and required.

The Joint Select Committee also recommended that the Council of State shall not have an official majority, and its assent would not be necessary to the certification of Acts by the Governor-General. The latter was to enjoy that power unconditionally. The budget-votes of the Assembly on the narrow range of votable items have often met with scant courtesy at the hands of the executive, and the 'non-official' Council of State has generally been available to support the Government. Thus, the question whether the alterations suggested by the Joint Select Committee regarding certain details of the Bill were merely intended to clothe some of the Montagu proposals in a parliamentary garb or not is a problematic one; at least, if the changes were inspired by genuine liberal intentions, these have not been realised by the results.

The Preamble to the Government of India Act, 1919, furnishes the key to the present Indian constitution. It runs as follows:

Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of the Indian administration and for the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the Empire;

And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken;

And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples;

And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred,

and by the extent to which it is found that confidence can be reposed in their sense of responsibility ;

And whereas, concurrently with the gradual development of self-governing institutions in Provinces in India, it is expedient to give to these Provinces in provincial matters the largest measure of independence of the Government of India which is compatible with the due discharge by the latter of its own responsibilities ;

Be it therefore enacted, etc. . . . . .

The constitution of India is thus based on the assumption, that India is to remain a part of the British Empire, the British Parliament retaining its ultimate power of control along with that of determination of the time and manner of each advance. The most important part of the Preamble was, however, the declaration that the application of the principle of responsible government was the goal of British policy in India.[9]

"Applied to Dominion conditions, responsible government demands that the powers of the Crown or its representative, whether resting on the prerogative or on Statute must be exercised on the advice of ministers. Ministers must be members of the legislature and possess the confidence of the majority thereof, save that, if such confidence is withheld, they may be permitted to remain advisers pending the result of an appeal to the political sovereign, the electorate. A ministry depends on the leadership of the Prime Minister, who is selected by the Crown as commanding the support of the majority of the lower house and who recommends his colleagues for office. On defeat in that house on any important issue a ministry must resign unless it is granted a dissolution. A ministry must observe solidarity of action and of responsibility to the lower house."[10]

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9 *Vide* Appendix I to this Chapter for a critical discussion.

10 A. B. Keith—*The Constitutional Law of the British Dominions, 1933,* p. 100.

The message that His Majesty the King-Emperor addressed to the Indian Legislature and the members of the various provincial legislatures, on the occasion of the inauguration of the newly constituted Indian Legislature emphasised the nature of responsible government conferred on India. "For years, it may be, for generations", His Majesty declared, "patriotic and loyal Indians have dreamed of Swaraj for their Motherland. **To-day you have the beginnings of Swaraj within my Empire, and widest scope and ample opportunity for progress to the liberty which my other Dominions enjoy".**

Lord Chelmsford in his speech made on the same occasion, further explained the organic character of the change that was introduced. He said: "There are changes of degree so great as to be changes of kind, and this is one of them. For the first time the principle of autocracy, which had not been wholly discarded in all earlier reforms, was definitely abandoned; the conception of the British Government as a benevolent despotism was finally renounced; and in its place was substituted that of a guiding authority whose role it would be to assist the steps of India along the road that, in the fulness of time, would lead to complete Self-Government within the Empire. In the interval required for the accomplishment of this task, certain powers of supervision, and, if need be, of intervention, would be retained, and substantial steps towards redeeming the pledges of the government were to be taken at the earliest moment possible". There could thus be no doubt as to the kind of responsible government that was promised to India.

The preamble also envisages the gradual development of self-governing institutions in the provinces. The Act of 1919 for the first time in Indian constitutional history demarcated the spheres of the central and provincial governments. In financial, legislative and administrative spheres the Act provided for a substantial measure of independence to the provinces from the control of the Government of India, "compatible with the due discharge by the latter of its own responsibilities." The goal promised in this connection is commonly

known as provincial autonomy. This phrase has been interpreted as indicating the "government of a province by the people freed, as far as practicable from the control of the central power." Autonomy implies self-government, and self-government is not complete if along with freedom from external control, the government is not responsible to the people.[11]

A narrower interpretation has, however, been given in certain quarters. Sir Frederick Whyte says that, "Provincial autonomy does not of necessity tell us anything of the condition of domestic government prevailing in any province or state; and . . . the term can have no meaning but that which derives from the relation of a Governor's Province to the Government of India and ultimately the Crown itself as represented by the Secretary of State and the Imperial Parliament."[12] Even in this restricted sense the provinces enjoy very limited freedom, inspite of the promise held out in the preamble and the Devolution Rules under sections 19A and 45A.

In the Montagu scheme of reforms nothing like a federation was contemplated; the Indian constitution in legal theory continues to be a unitary one. The Central Government has the overriding power of making laws for 'all persons, for all courts, and for all places and things within British India'. The previous sanction of the Governor-General is necessary for certain classes of Bills, before being placed before a Provincial Council. The assent of the Governor-General is also necessary for all acts, a provision not found even in Canada, the federation with the greatest unitary bias.[13]

In the interests of progress in the local sphere through local initiative, and as a step towards the growth of self-governing institutions, certain measures for securing freedom from the control of the centre have been

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11 Sir P. S. Sivaswamy Aiyer—*Indian Constitutional Problems*, p. 22.

12 *India a Federation?*—pp. 295-96.

13 British North America Act, Sec. 90.

taken. This has been done with a view to introducing a modified measure of responsibility in the provincial administration. In order to secure even a limited autonomy the first pre-requisite is a demarcation of the administrative and financial spheres between the centre and the provinces. This has been effected by means of the Devolution Rules, mainly based on the recommendations of the Subjects Committee presided over by Lord Southborough (1919).

The new arrangement abolished the divided heads of legislation and administration. One part is allotted to the Central Government and the other to the Provincial Governments. Questions of all-India importance, requiring uniformity and unity of control have been assigned to be administered by the Government of India and are called Central subjects. The more important among these subjects are: Defence of India ; foreign affairs ; relations with States in India ; communications, including railways ; posts, telegraphs and telephones ; major ports, shipping and navigation ; customs, cotton excise duties, income-tax, salt and other sources of all-India revenues ; currency and coinage, public debt of India, savings banks, census and statistics, commerce and companies, patents and copyrights, survey of India ; archæology, zoological survey, meteriology ; all-India services and the Public Service Commission ; civil and criminal law and procedure ; research institutions and specificed universities ; and legislation as to redistribution of territories and on all matters not expressly given to the provinces.

The Provincial list includes subjects like local self-government, excise, industries, co-operation, agriculture, education, land laws, famine relief, irrigation, factory

inspection and labour matters in general, etc., in which a variety of arrangements may simultaneously exist in different parts of India, as may be justified by local conditions and needs.[14]

In the financial sphere the provinces have their separate budgets. The provinces were required to make contributions to meet the anticipated central deficit. Such contributions continued for some time to be the first charge on their revenues.[15]. Definite sources of income, corresponding to the departments made over to the provinces, have been allotted to them. They also include (*i*) a share of income tax collected in the province,[16] (*ii*) the proceeds of new taxation under the heads so assigned,[17] or (*iii*) of loans floated by provincial governments, and (*iv*) provincial balances standing to the credit of the provinces at the time when

[14] The details of this topic are dealt with in Chapter Six.

[15] These contributions were fixed by the Joint Select Committee as a "definite proportion of the estimated provincial surplus." The Financial Relations Committee, presided over by Lord Meston, which reported in 1920, suggested that the basis of assessment be made on the "increased spending power" of each province resulting from the new settlement. The total contribution for the first year, fixed at 983 lakhs, was to be gradually wiped out, the proportions for reduction being specified in the Devolution Rules The contributions could not be paid by several provinces and remissions had to be offered to some others. With the improvement of the position in the central exchequer, they were finally extinguished in 1927-28. For a critical and lucid survey, see P. N. Banerjea—*Provincial Finance in India,* Chapters VII-X.

[16] This was according to the Joint Select Committee's recommendation. The object was to remedy the apparent inequity of depriving the provinces of a share of the income-tax earned and collected in their territory often with their help. But this provision, embodied in Devolution Rule 15, has failed to give relief to the industrial provinces for whose benefit it was framed.

[17] Without the previous sanction of the Governor-General, taxes may be imposed by a provincial government on land put to non-agricultural uses, on succession, on gambling, on advertisements, on amusements and on any specified luxury, on registration and on stamps besides duties which have been fixed by Indian legislation. Other taxes may also be levied, without the previous sanction of the Governor-General, for purposes of local self-governing institutions.

the Act of 1919 came into force. The provinces now enjoy the power of borrowing for certain specified purposes, *viz.*, to meet capital expenditure on any work of a material character, or of lasting public utility. Such loans require the sanction of the Governor-General in Council if floated in India, and of the Secretary of State, if floated in England. These authorities also enjoy the power of fixing the amount to be borrowed.

APPENDIX I

A NOTE ON THE MEANING OF RESPONSIBLE GOVERNMENT

Regarding the ultimate goal of "responsible government" a controversy was raised by Sir Malcolm Hailey's speech as Home Member in the Legislative Assembly in 1924 (Feb. 8), in the course of the debate on Mr. Rangachariar's resolution urging the grant of Dominion Status for India. Sir Malcolm said: "If you analyse the term 'full Dominion Self-Government' you will see that it is to some extent conveying that not only will the executive be responsible to the legislature but the legislature will in itself have the full powers, which are typical of the modern Dominion. I say that there is some difference of substance because Responsible Government is not necessarily incompatible with a Legislature with limited or restricted powers. It may be that full Dominion Self-Government is the logical outcome of Responsible Government; nay, it may be the inevitable and historical development of Responsible Government, but it is a further and final step." This statement was challenged by Indian public men and the Nehru Report (on behalf of the All-Parties' Conference) in 1928 discussed the inconsistency of Sir Malcolm's *obiter dicta*.

The Nehru Report observed: "If the atmosphere in which the declaration was made by Parliament, and the demand in response to which it was made, are borne in mind; if further, it is borne in mind that India was just like the dominions a signatory to the peace treaties, and is and has been an original member of the League of Nations, there should be no room for doubt that England is pledged to India that her place in the British Commonwealth of Nations is to be exactly the same as that of any other self-governing 'dominion' . . . . As against Sir Malcolm Hailey's interpretation, we refer to the royal proclamation of December 23, 1919 as pointing the way to *'full responsible*

government hereafter' and 'the right of her (India's) people to direct her affairs and safeguard her interests'." To hold that British statesmen really meant to promise to India only a responsible government with a 'legislature with limited or restricted powers', would be "to attribute to them", according to the authors of the Nehru Report, "a deliberate equivocation which if true, must tend to shatter the faith of even those Indian political parties in the plighted words of British Parliament, which have acted upon the assumption that dominion status was India's allotted goal."

Official repudiation of Sir Malcolm Hailey's interpretation of the intentions of the Montagu announcement and the Act of 1919, only came on October 31st, 1929 when Lord Irwin, after consultations with the British Government made the important announcement about holding a Round Table Conference. The relevant portion of his speech is as follows; "As I recently pointed out, my own Instrument of Instructions from the King-Emperor expressly states that it is His Majesty's wish and pleasure that plans laid down by Parliament in 1919 should be the measures by which British India may attain its due place among His Dominions. . . . . But in view of the doubts which have been expressed both in Great Britain and India regarding the interpretation to be placed on the intentions of the British Government in enacting the statute of 1919, I am authorised on behalf of His Majesty's Government to state clearly that in their judgment, it is implicit in the Declaration of 1917 that the natural issue of India's constitutional progress, as there contemplated, is the attainment of Dominion Status."

Mr. Wedgwood Benn, the then Secretary of State of India, in his famous 'Dominion Status in action' speech in the Commons in December 1929, is reported to have said that the goal of British policy in India had been declared to be the achievement of Dominion Status. In support of this the Secretary of State for India cited the history of some Indian events. Commenting on India's tariff autonomy, the relaxation of control by the Secretary of State, the new policy of stores purchase, the appointment of an Indian High Commissioner in London, India's seat on the governing body of the International Labour Office and the separate representation of India at the five-Naval-Power Conference in

London, he observed : "Just as in the history of every Dominion, it has not been a matter of legislative change but of use, custom, wont and tradition which have built up these powers; the same procedure is proceeding rapidly in the case of India today." The Secretary of State concluded by saying that though India did not possess internally a responsible form of Government, externally she was enjoying some of the privileges incidental upon the attainment of Dominion Status.

In this connection, the opinion of that constitutional authority, Prof. Arthur Berriedale Keith, furnishes instructive and interesting reading. It has, indeed, become fashionable, he says, to adopt the suggestion that between the promise of 1917 and Dominion Status there is a wide difference. Responsible government, it is argued, means control of internal issues only by Ministers responsible to local Parliaments; control of external matters is a later development, and those who determined on the policy of 1917 had no intention of including the wider powers in their assurance. This suggestion, in the opinion of Prof. Keith, is "plainly untenable". He writes : "It is forgotten that on no occasion had any attempt been made, up to 1917, to discriminate between Dominion Status and responsible government. . . . . But that it never entered the head of the Government responsible for the promise of 1917 to seek to limit India to the measure of authority of the Dominions in 1917 is sufficiently proved by the demand of the Government in 1919 that India should be accorded the full position of a Dominion as a member of the League of Nations. There is no more convincing proof of the real meaning of a promise than the steps taken thereafter, by the party which made it freely, to give it effect. . . . It is clear, therefore, that the promise of 1917 has only been made precise, not enlarged in scope, by the later assurance of Dominion Status".—*India Analysed*, Vol. I (Gollanez, 1933).

APPENDIX II

DEVOLUTION OF POWERS TO THE PROVINCES BEFORE THE MONTAGU REFORMS

Formerly the Government of India 'regarded themselves as distinctly charged with the duty of framing policy and inspiring reforms for the whole of India'. The unitary system of government in this country has been the result of the process of centralisation of authority begun with the Regulating Act of 1773. This process can be traced step by step through the subsequent decennial Acts passed by Parliament and completed by the Charter Act of 1833, which made the Governor-General of Bengal in Council the Governor-General of India in Council. The direction and control of the civil and military government of the Company's territories and revenues in India were vested in the Governor-General. The Madras and Bombay Governments were left with the right of proposing to the Governor-General in Council projects of certain laws. In 1861, the right of independent legislation was restored to the provinces, with large limitations.*

In the financial sphere, with the gradual settling down of political conditions, the need for centralization of funds began to diminish. Under the system which continued till 1870, the vehemence with which a provincial government could put forward its claims, largely determined its share of the revenues. For even petty grants they had to report for the orders of the Government of India. As Sir John Strachey, once Finance Member of the Government of India, remarked, in such a situation "the distribution of the public income degenerated into something like a scramble in which the most violent had the advantage with

* A vast sphere of legislation was absolutely prohibited to the provinces and provision was made for previous permission and subsequent sanction by the Governor-General and the Secretary of State for India after a review of the situation. The Decentralization Commission (1909) was of opinion that substantial devolution in the legislative sphere was called for at least in order to ensure the proper administration of the subjects of local interest.

very little attention to reason. As local economy brought no local advantage, the stimulus to avoid waste was reduced to a minimum, and as no local growth of the income led to local means of improvement, the interest in developing the public revenues was also brought down to the lowest level". Again, "knowing that money saved at the end of the year was lost to the provincial administration, a Local Government was little anxious to save".†

Lord Mayo's scheme of decentralization handed over a few departments, e.g., police, jails education, hospitals, roads and communications, for provincial management. In order to meet the expenses the central government assigned certain sources of revenue and a fixed grant to the provinces with the right to a limited sphere of extra taxation. The success of this policy led to further advance seven years later, under the Viceroyalty of Lord Lytton. Several new departments including excise, stamps, law and justice were made over to the provinces, along with the income from them. The details of the application of the scheme to different provinces were fixed by separate five-year contracts with them.

In 1882, during the Viceroyalty of Lord Ripon, as a result of the experience of the working of the system of provincial contracts, certain modifications were made in the shares of the central and provincial governments. This resulted in the division of Government revenues under three heads, viz., Imperial heads purely provincial heads and divided heads, in accordance with the destination of the receipts from the departments.

The quinquennial settlements, however, kept up the defect of uncertainty and bargaining inherent in the Mayo Settlements. Lord Curzon in 1904, therefore, revised the settlements with a view to making them quasi-permanent. In 1912, Lord Hardinge's Government declared them to be permanent. The control of the central government over all taxation imposed in British India, and even over provincial budgets continued with little relaxation. Further, the provinces were not allowed to borrow on their own account in the open market.

† *Indian Administration and Progress,* (Third Edition) pp. 112-113.

CHAPTER FOUR

IMPERIAL CONTROL

I. The Crown

India is governed by and in the name of the British Crown. The powers which are vested in the Crown are not exercised by the King in his personal capacity. The Crown is a very important element in the British constitution. In matters relating to the government of Britain, the King enjoys extensive powers.

Such powers as the King possesses are, however, usually exercised by him through Parliament and responsible ministers. In the case of India, the King exercises the powers with which the British Crown has been vested with reference to the Government of India, through, and on the advice of, the Secretary of State for India, who is responsible to the British Parliament and the British electorate.[1]

[1] "The King has, in the course of time, sunk from being the most important to the least important factor in legislation. The King cannot even defend himself against ministers whom he does not happen to like . . . The King has become the honoured symbol of State supremacy. Personally unassailable and immune, he can intervene politically only when he nominates a Prime Minister . . . Should the two-party system in future disappear, and England be governed by three or more parties, the case might easily arise when the King would have the choice between several candidates for the leadership . . . . . The King thus represents a sort of residuum of power, constitutionally undefined, which can, in combination with other factors—but never alone—help to direct the ship of the State in one course or the other; a technical aid, available for unforeseen contingencies. Therefore, his prerogative must not be defined in details . . . And since during the last years, the Dominions have become entirely

The very wide and extensive powers vested in the Crown by statute may be grouped under the heads, (*a*) Executive, (*b*) Legislative, and (*c*) Judicial and Ecclesistical.

A number of the highest executive appointments, such as those of the Governor-General, the Governor of a province,[2] the High Commissioner for India, the Auditor of the Accounts of the Secretary of State in Council, members of the Governor-General's Executive Council, members of a Governor's Executive Council are made by the Crown. His Majesty's sanction is necessary to the creation of a Governor's province, transfer of districts from one province to another, the creation of a new legislature in a province, etc. Members of the Civil Service hold office during His Majesty's pleasure. He may remove from office any member of the Council of the Secretary of State for India on an address of both Houses of Parliament.

The Crown possesses the power to disallow Acts of the Indian legislature, as also of Provincial legislatures. Bills certified by the Governor-General or a Governor

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free from English command, and are united with England only through the person of the sovereign, there is another direction from which an energetic and skilful King may expect a resuscitation of dormant power.

"The King has his significance in day-to-day politics, too. He is the one Englishman who has access at any time to the Prime Minister . . . The King's opinion is of importance to the leading statesman. It will penetrate through countless channels into court and aristocratic circles and the political clubs." Wilhelm Dibelius—*England* (Original German edition, 1922), pp. 228-29.

2 The Governors of Bengal, Bombay, and Madras are directly appointed by the Crown from among public men in England, but other Governors are appointed after consultation with the Governor-General of India.

cannot ordinarily have effect until these have received His Majesty's assent. Moreover, copies of such certified Acts before being placed for His Majesty's assent, must have been laid before each House of Parliament for not less than eight days on which that House has sat.[3]

The Crown appoints the Chief Justices and other Judges of High Courts and the Advocates-General of Bengal, Bombay and Madras. He may establish new High Courts. He also appoints the Bishops of Bengal, Bombay and Madras and determines their functions and jurisdictions.

II. The Secretary of State for India

When the government of India was transferred from the East India Company to the British Crown, the Government of India Act, 1858, provided that all powers and duties then exercised or performed by the East India Company should in future be exercised and performed by one of His Majesty's Principal Secretaries of State. As we have already seen, for this purpose the post of a new Secretary of State was created and he was described as the Secretary of State for India. The powers so far exercised by the Board of Control, the Court of Directors, and the Court of Proprietors were henceforth to pass to the Secretary of State for India. A Council for India was simultaneously established to advise him.

According to the terms of the Indian constitution now in force the Secretary of State for India is, on the one hand, authorised to superintend, direct and control all

3 This is provided so that members of Parliament may be able to scrutinise whether those measures, though rejected by the central legislature or provincial legislatures in India, should have been specially certified by the executive.

acts, operations, and concerns relating to the government or revenues of India ; on the other, the Governor-General in Council is directed to pay due obedience to all orders as he may receive in such matters.[4] This leaves no room for doubt as to the supremacy of the Secretary of State over the Governor-General and the Government of India.

The Secretary of State is, of course, the adviser of the Crown in the exercise of the latter's statutory powers of appointment, etc. The sanction or approval of the Secretary of State is necessary in certain matters. Ordinary matters of administration, involving important questions of policy, are also referred to him by despatches or cablegrams and their number is "amazingly large". The detailed rules governing the relations of the central and provincial governments are framed with the approval of the Secretary of State. It is significant that the Secretary of State has the charge of the Services, whose members can make or mar projects of Ministers in the Departments transferred to their charge in the provinces. The secretaries of these Departments

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4 Section 19A provides for the relaxation of the control over the Government of India exercised by the Secretary of State and the Secretary of State in Council. By the use of the rule making power, with the approval of Parliament, considerable devolution of powers have accordingly been made.

5 Mr. Montagu once described the relations between the Viceroy and the Secretary of State as 'intimate' and suggested that the latter worked through the agency of the former. The speech gave rise to a good deal of resentment. But though it is true that the relationship is largely dependent on what has been described as the "personal equation", there are instances of the Viceroy being absolutely overridden by the Home authorities.

Lord Morley in an article in the *Nineteenth Century and After* (February, 1911) emphasised the fact of the constitutional subordination of the Viceroy. Though, by means especially of private correspondence, they can influence each other, the Secretary of State's voice must be final. Sir Tej Bahadur Sapru in summarising the position says that the control of the Secretary of State is of a very real and living character, that the relations between the Secretary of State and the Governor-General is of a specially confidential nature, and that the methods of control are many and difficult to be understood by an outsider. *The Indian Constitution*, pp. 59-66.

are ordinarily members of the Civil Service, and members of the Imperial Services have the right of appeal to the Secretary of State.

The extent of the legislative powers exercised by the Secretary of State is illustrated in the provision which lays down that every Act of the Indian legislature or of a Provincial Council has to be sent to the Secretary of State for India after the Governor-General has given assent to it ; and it shall be lawful for His Majesty in Council to signify his disallowance of any such Act. The central legislature and the provincial Councils have important limitations of their powers. In some cases, the previous sanction of the Secretary of State is necessary to initiate legislation. Moreover, in actual practice all important central legislation is reported to the Secretary of State before being presented to the central legislature. Thus, though the sphere of his direct control is not large, in practice as well as in law, the indirect control exercised by the Secretary of State is very extensive, indeed.

The Secretary of State usually need not interfere in those cases where the Government of India and the non-official Indian opinion are in agreement. In special cases, however, he can do so for safeguarding Imperial interests. One such specific case was mentioned in the Secretary of State's despatch dated 30th June, 1921, regarding **Fiscal Policy.** He then said that the Secretary of State "should as far as possible avoid interference on this subject when the Government of India and the Indian Legislature are in agreement, and it is considered that his intervention, when it does take place, should be limited to safeguard the international obligations of the Empire or any fiscal arrangement within the Empire to which His Majesty's Government is a party". This was in accordance with the recommendations both of the Committee on the Home Administration of Indian Affairs and the Joint Select Committee on the India Bill, (1919).

But unfortunately the spirit underlying this convention has not always been observed either by the Home Government or the Government of India. In fact, Sir George Rainey, speaking on behalf of Government, in March 1930, in the Indian Legislative Assembly, asserted that as India did not possess responsible government, the agreement asked for must mean the preponderating voice of the Government of India. "The Fiscal autonomy convention means this", he added, "that while there is always previous consultation with the Secretary of State, the final decision as to the proposals to be placed before the Legislature rests with the Government of India and none else." This interpretation was vigorously contested by prominent non-official members of the Assembly.

The Act of 1919 provides that the salary of the Secretary of State shall be paid out of moneys provided by Parliament. Thus the Secretary of State has been brought under the direct control of Parliament. This provision has been given effect to since 1st April, 1920.[6]

The Secretary of State is assisted by a permanent Under-Secretary and a Parliamentary Under-Secretary. The Parliamentary Under-Secretary like the Secretary of State changes with the ministry. The Secretary of State's salary of £5000 a year and the Parliamentary Under-Secretary's salary of £1500 a year are paid out of British Revenues. The British Treasury also contributes a lump sum towards the expenses of the India Office.[7]

6 The insertion of Section 2 (3) provide an occasion for raising the India issue in Parliament during the voting of supply. This was really a concession to progressive public opinion in India and in England.

Even in 1906, a motion in favour of placing the salary of the Secretary of State and the expenditure on the India Office on the British Estimates, was defeated by a large majority in the House of Commons, on the ground that the proposed change would tend to bring the Indian administration into party-politics.

7 This contribution amounts to only about half the expenses of the cost of the India Office. Sir Purushottamdas Thakurdas

Occasions for raising discussions on India in Parliament are offered in a variety of ways *e.g.*, in the debate on the King's speech at the opening of a session, by means of questions and adjournments, by discussions during the different stages of the Budget and on the India Office Estimates. But as India has been regarded as generally outside of party-politics, the supremacy of Parliament has scarcely been of much value in promoting the constitutional progress of India. The influence of vested interests could make easier inroads, especially due to the ignorance and lack of interest of the average M.P. and the autocratic nature of the Indian executive. On occasions, it has been ironically pointed out, the Secretary of State for India has not taken his brief from India—a situation which has made Parliamentary control ineffective in protecting India from interested groups.

An official Committee has observed that in view of the bureaucratic form of the Government of India, parliamentary control has proved illusory. "The business of Parliament is too great and too complex to enable any effective control to be exercised over Indian expenditure. In practice, therefore, the control of the India Office has been merely the control of one bureacuracy over another."[8]

III. The Council of India

The Council of the Secretary of State for India is known as the Council of India. It was first constituted under the provisions of the Government of India Act of

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pointed out the inequity of a lump payment in view of the changed nature of the functions of the India Office (*Vide* his Note to the Indian Retrenchment Committee's Report). The Joint Select Committee, it may be noted, recommended the payment of all charges of the India Office from British revenues.

8 Report of the *Esher Committee on the Army in India* (1919), p. 5.

Parliament has, however, set up since 1920 a Joint Standing Committee on Indian affairs, consisting of eleven members of each House. The object is to keep Parliament in closer touch with Indian affairs and to refer to the Committee draft rules and also Parliamentary Bills, after they have been read a second time.

1858.[9] It now consists of not less than eight and not more than twelve members ; of these three are Indians.[10] It is provided that half the members of the Council are to be persons who have served or resided in India for at least ten years and have not last left India for more than five years before the date of appointment.[11] Every member of the Council holds office, except in certain special circumstances, for a term of five years.[12] There is a provision for reappointment, but in such cases the reasons for reappointment are to be set forth in a minute signed

9 Originally, it was composed of eight members nominated by the Crown, and seven others to be elected, in the first instance, by the Court of Directors, and later by the Council. Of these, at least nine persons must have served or resided in British India for ten years and must not have left India more than *ten* years before their appointment. In 1869, the power of filling vacancies was given to the Secretary of State. In 1907, the minimum and maximum numbers were fixed at ten and fourteen respectively.

10 In 1907, Morley appointed Sir (then Mr.) K. G. Gupta and Saiyed Husain Bilgrami as members By this the Secretary of State wanted to make a striking demonstration of the promise held out in 1833 and repeated in the Queen's Proclamation, of the free and impartial admission of Indians to offices. A third Indian member was added to the Council in June, 1917, when the terms of the announcement later made by Mr. Montagu were under consideration.

11 The Secretary of State's principal adviser on Indian military affairs is the Secretary in the Military Department of the India Office, who is usually an officer of the India Army of the very highest rank, with recent Indian experience. In addition, a convention has grown up, by which a retired Indian Army officer of high rank has a seat on the Council.

12 In 1858, it was provided that they would continue in office during *good behaviour*. Lord Derby, the then Prime Minister, expressed his hope that such a permanent large Council would develop an *esprit de corps*. In 1869, the tenure of membership was limited to ten years. From 1907, till the introduction of the Montagu-Chelmsford Reforms, the usual period was one of seven years. This was modified, as the Joint Select Committee then observed, "in order to ensure a continuous flow of fresh experience from India and to relieve Indian members from the necessity of spending so long a period as seven years in England."

by the Secretary of State and laid before both Houses of Parliament. The members receive an annual salary of £1200, and members of Indian domicile an annual subsistence allowance of £600 besides.[13] No member of the Council of India can be a member of Parliament. The Council carries on the business in relation to the government of India transacted in England and the correspondence with India. The Secretary of State is the President of the Council with power to vote. A meeting of the Council must be held once every month. The Council usually meets once a week and is convened by the Secretary of State. The Secretary of State has the power, which he uses, for overruling its decisions.[14] Under the Act of 1919, the Secretary of State enjoys larger powers, than in the past, of controlling the manner in which business is to be transacted by the Council.

In three classes of cases[15] a majority of votes is required. Firstly, it is laid down that no grant or appropriation of the revenues of India, or of any other property coming into the possession of the Secretary of

13 Such salaries and allowances may be paid out of the revenues of India or out of money provided by Parliament [Sec. 3 (9)].

14 Except in cases where a majority of votes is declared by the Act to be necessary, the Secretary of State's determination is final. All acts done in a meeting of the Council in the absence of the Secretary of State require his written approval. As an ex-member of the India Council, Mr. Surendranath Mallik, C.I.E., said, the Military and Political Departments were virtual dictators and even when Indian interests were being sacrified, protests by one or two members were bound to be of no avail. *Evidence before the Simon Commission.* The Crewe Committee on the Home Administration of Indian Affairs (1919) observed that the India Council has scarcely shown any independence, and has always accepted proposals communicated to the Council as decisions of the British Cabinet, through the Secretary of State.

15 Cp. Sections 21, 28 and 29; 94, 95, 99 and 100 of the *Government of India Act,* 1919.

State in Council, is to be made without the concurrence of a majority of votes at a meeting of the Council of India.[16] An Auditor-General in India is appointed by the Secretary of State in Council.[17] He holds office during the pleasure of the Crown.

It is also laid down that the sale, purchase and mortgage of any property, the making of contracts[18] and the raising of loans shall be subject to the control of the Council.[19] The accounts of the revenue and expenditure

16 "But this (financial) check is practically rendered nugatory by the power given to the Secretary of State to deal with business alone in the Secret Department . . . A Secretary of State may order and has ordered, military operations to be undertaken by the Government of India, involving an expenditure of millions of money, not only without the sanction, but without even the cognizance of his Council". Sir George Chesney—*Indian Polity*, pp. 371-72.

17 This officer is the final audit authority in India and he is responsible for the efficiency of the audit of expenditure. In order that he may be sufficiently independent to fulfil his powers of supervision, he cannot hold any other post under the Crown in India, on vacating his office.

18 This power has been modified in practice by the creation of the post of High Commissioner for India, in accordance with Sec. 29A of the Act of 1919.

19 The Council never has had any power of initiating action or expenditure, and all expenditure sanctioned must be for the "purposes of the Government of India alone". Further, on Gladstone's suggestion it was provided in 1858, that "Indian revenues cannot be expended on military operations carried on beyond the external frontiers of India, without the consent of both Houses of Parliament". The nature and extent of this control is explained succintly by the Indian Statutory Commission (1930) as follows: "It is possible to define by rules the extent to which the Secretary of State in Council keeps control over expenditure in his own hands. The rules delegating financial powers have never been lists of matters for which sanction is not required; they prescribe the exceptional matters in regard to which sanction is still necessary; the list of matters which have not been delegated is now of modest dimensions and the tendency to reduce it is still active. Some of the restrictions are financial in name only; they are retained not because of the expenditure involved, but because a financial limit is the only convenient method of keeping control of a matter which has an

of British India are to be annually laid before Parliament in accordance with prescribed rules. These are 'audited' in Britain by a person appointed by His Majesty.

It should be noted that according to rules framed under Section 19A, the Council has now no control over practically the whole expenditure on transferred subjects in the provinces. Even in the reserved field and over the Central Government's expenditure the Council's consent cannot authorise votable expenditure. Only over non-votable items the control remains constitutionally unrestricted.

The Secretary of State in Council, further, exercises authority in matters affecting the Services. A Public Service Commission has been established in India for the purpose of carrying on, in regard to recruitment and control of the public services in India, such functions as are assigned thereto by rules made by the Secretary of State in Council, who has the power of appointing the Commission.

The Council is divided into committees and intricate questions are first debated in them. But these committees are subordinate to the Secretary of State. The Secretary of State, moreover, may or may not place many matters and relevant information before these committees. The committees are maintained only for administrative convenience.[20]

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importance of a different kind. An example is the rule that the abolition or creation of posts carrying more than a certain rate of pay requires Council sanction; such posts are of the class held by officers of the All-India services, whose interests are a special concern of the Secretary of State in Council". (Vol. I, para 266).

[20] Sir Sivaswamy Aiyer has applied the following humorous lines on the old India Office by Thomas Love Peacock, once an employee of the Company, to the duties of the members of the India Council :

"Eleven to noon, think you have come too soon.
Twelve to one, wonder what's to be done.
One to two, find nothing to do.
Two to three, begin to see.
'T will be a great bore to stay till four".

The Council of the Secretary of State has for long been regarded as an anachronism, as it has generally stood in the way of progress and reform. Mr. Ramsay Macdonald once described it as a "civil service imposed as a check upon a legislature". "It destroys real parliamentary interest without giving India control or expert political advice . . . . . It is an adjunct to bureaucracy, not to Indian opinion. It becomes more and more anomalous," he added, "as representative institutions are established and broadened".[21]

The majority of the Crewe Committee on the Home Administration of Indian Affairs (1919), recommended the abolition of the Council of India and the transference of all its powers to the Secretary of State, to establish the undivided responsibility of the latter to Parliament. Though they were of opinion that there was no constitutional function of the Secretary of State in Council which under the new constitution could not equally be well-discharged by the Secretary of State alone with the help of the permanent staff, they advocated the creation of a statutory Advisory Committee to which certain questions might be referred to form time to time for advice and assistance.

Professor Keith, however, in his Minority Report opposed the continuance of the Council in the transformed character of an Advisory Committee. He objected to the procedure of doing over again what the Government of India had possibly already discussed threadbare.[22] The delay caused by such a procedure and the conservatism natural to retired officials made the interference of the Imperial authorities galling even in the old bureaucratic Government of India; with changed circumstances, he urged, occasions for such interference should be reduced to a minimum

Mr. Bhupendranath Basu, another member of the Committee, also opposed the creation of an Advisory Committee. This would, he said, retain the demerits of the old system without having many of its merits. He was of opinion that the abolition of the

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21 *Government of India*, p. 50.
22 Para 31 of the Report of Professor A. B. Keith.

Council will "throw much greater responsibility on the Government of India, which in its own interest will have to share it with the representatives of the people."[23]

The Joint Select Committee, however, thought it better to continue "a body which had all the advantages behind it of tradition and authority", as they were convinced that the Secretary of State will continue to require the advice of persons of Indian experience, and if no such Council existed, he would have to form an informal one.

IV. The High Commissioner for India

The post of High Commissioner for India in the United Kingdom was created by an Order-in-Council dated 13th August, 1920. The High Commissioner is entrusted with the performance of certain functions formerly performed by the Secretary of State for India or the Secretary of State for India in Council.

The creation of the post was suggested by the Crewe Committee as a step "towards Dominion Status". The principle underlying the proposal was, the Committee suggested, that the India Office would retain its political and administrative functions only, and the entire charge of this body would fall on the British Treasury.

The High Commissioner is a servant of the Government of India and the post carries an annual salary of £3000, which is paid out of the revenues of India. He is appointed for five years and is eligible for re-appointment. He is the agent in the United Kingdom of the Governor-General in Council and the Provincial governments.

23 Mr. Basu's Note on the Report, para 8.

24 Sir William Meyer, Sir Dadiba Dalal and Sir Atul Chandra Chatterji have occupied this post in succession. The post has been held by Sir Bhupendranath Mitra, since 1st July, 1931.

FUNCTIONS OF HIGH COMMISSIONER

The High Commissioner is entrusted with agency functions such as those relating to the purchase of Government stores in England, and the supervision of the work of the Indian Trade Commissioner and the Indian Students' Branch, etc. He appoints his own staff. He is empowered to enter into contract on behalf of the Secretary of State. His other duties include such work as the payment of Civil leave allowances and pensions, the recruitment of technical officers, supervision of I.C.S. and Forest Service probationers after first appointment,[25] making arrangements for officers on deputation or on study leave, sale of Government of India publications, etc.

The office of the High Commissioner is accommodated in the India House, recently built in London, at a cost of £324,000.

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[25] Sir Sivaswamy Aiyer suggests that not merely this but the recruitment of Civil Servants and the covenants with them should be done by the High Commissioner on behalf of the Government of India, following the analogy of the Dominions. *Indian Constitutional Problems*, p. 185.

CHAPTER FIVE

CENTRAL GOVERNMENT

I. The Executive

The Montagu-Chelmsford Report laid down that while in the provinces the earlier steps towards the progressive realisation of responsible government should be taken, a similar and simultaneous advance could not be made in the central superstructure of the Government of India. "The Government of India must remain wholly responsible to Parliament, and saving such responsibility its authority in essential matters must remain indisputable, pending experience of the effect of the changes now to be introduced in the provinces". In the meantime, they urged, the Indian Legislative Council should be enlarged and made more representative and its opportunities of influencing Government increased. In proportion as the foregoing changes took effect, the control of Parliament and the Secretary of State over the Government of India and the provincial governments should be relaxed.

In the Central Government the principle of responsibility finds no application. "The legislature is given power and importance, but is in subordination to the executive, in that it has no means of controlling that body save by moral authority."[1]

In accordance with the terms of the Government of India Act, 1919, the superintendence, direction and

[1] A. B. Keith—*The Constitution, Administration and Laws of The British Empire: A Survey.*

control of the civil and military government of India is vested in the Governor-General in Council. He is, however, required to carry out such orders as he may receive from the Secretary of State, subject to the provisions of the Act.[2] The Governor-General in Council is thus the embodiment of the Government of India. Mr. Ramsay Macdonald describes him as "The Crown visible in India, the ceremonial head of the sovereignty, the Great Lord". Unlike the Governments of the Dominions, the Government of India has only certain delegated powers.

The Governor-General

The Governor-General of India is appointed by the Crown on the recommendation of the Secretary of State for India. The Governor-General is also known as Viceroy, though the only important official recognition of this title is found in the Queen's Proclamation, describing him as "Our Viceroy and Governor-General". The term of office of the Governor-General is five years under normal circumstances. No High Court in India has any jurisdiction—either civil or criminal—over him, in his official capacity.[3] He receives a salary of Rs. 2,56,000, per annum and is surrounded by great pomp and pageantry.

President Lowell speaks of him as possessing autocratic powers comparable to the Czar of Russia. Such

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2 Holderness describes him as "a 'parliamentary' Governor-General responsible to parliament through the medium of the Ministry".—*Peoples and Problems of India.*

3 See p. 120.

powers tempt a man, he says, to use them even when there is no real emergency. The Governor-General even to-day weilds large powers of control over his executive council and the provincial governments on the one hand, and the Indian and provincial legislatures, on the other.

The powers that the Governor-General of India enjoys are mainly statutory. Besides the powers of appointment to certain high offices, the Governor-General possesses such powers as the exercise of the Royal Prerogative to grant pardon to offenders convicted by courts of justice. While the former is a statutory power, the latter is exercised by him in accordance with the terms as laid down in his warrant of appointment. He is in charge of the Foreign and Political department, which transacts all business connected with foreign affairs, Indian States and frontier tribes.

No proposal for the appropriation of any revenue or moneys for any purpose can be made except on the recommendation of the Governor-General. The Governor-General's previous sanction is also necessary to the introduction at any meeting of either chamber of the Indian legislature any measure affecting:

(*a*) the public debt or public revenues of India; or (*b*) the religion or religious rites and usages of any class of British subjects in India, or (*c*) the discipline or maintenance of any part of His Majesty's military (naval or air) forces; or (*d*) the relations of the Government with foreign princes or states; or any measure (*i*) regulating any provincial subject, or any part of a provincial subject, which has not been declared by rules under the Act to be subject to legislation by the Indian legislation; or (*ii*) repealing or amending any Act of a local legislature; or (*iii*) repealing or amending any Act or Ordinance made by the Governor-General.

The Governor-General may exercise his veto over

Bills passed by the Indian legislature.[4] He has also the power to certify measures[5] recommended by him but not adopted by the Indian legislature, if he thinks that such a course is essential for the safety, tranquillity or the interests of British India or any part thereof (Sec. 67). He may also return a bill passed by both Chambers of the Indian Legislature for reconsideration of either Chamber.

In cases of emergency, the Governor-General may promulgate Ordinances for the peace and good government of India or any part thereof for a period of not more than six months from the date of promulgation. The Governor-General *in Council* is further empowered to make "regulations" which shall have the force of Acts of the Legislature though never placed before it. The initiative for such measures may be taken by local governments, to which the relevant section (Sec. 71) is made applicable for the time being. Such regulation differs from an Ordinance in that the latter is promulgated on the initiative of the Governor-General, while in the case of the former action is taken on the motion of a local government.

In addition the Governor-General possesses special powers with reference to certain provincial measures.[6]

The Governor-General's Council.

Before the introduction of the Montagu-Chelmsford Reforms, the number of members of the Executive

[4] The Governor-General of a Dominion has also this power but he scarcely exercises it in practice. The other extraordinary powers possessed by the Governor-General of India are in excess of those possessed by the Governor-General of a Dominion.

[5] This power has been used in connection with the Prince's Protection Act (1922), the Finance Bills of 1923 and 1924, and the Bill to supplement the Bengal Criminal Law Amendment Act (1925). On all these occasions the Council of State approved the Bills.

[6] *Vide* Chapter Six.

Council of the Governor-General was six.[7] It is now laid down that the number of members of the Executive Council shall be such as His Majesty thinks fit to appoint. It is provided that at least three of the members of the Executive Council must be persons who have been for not less than ten years in the service of the Crown in India, and the Law Member must be a Barrister of England or Ireland or a member of the Faculty of Advocates of Scotland or a Pleader of an Indian High Court of not less than ten years' standing. The recommendation of the Joint Parliamentary Select Committee on Indian Reforms that "not less than three members of the Council should be Indians" has been given effect to.[8] There is, however, nothing to prevent the appointment of more than three members from among Indians.[9] A member of the Governor-General's Council receives a salary of Rs. 80,000 per annum.

There are at the present moment seven members of the Executive Council including the Commander-in-Chief in India.[10] The Commander-in-Chief is in charge of the

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7 The first Council of the Governor-General of India consisted of four members only, of whom the Law Member was not "entitled to sit or vote in the said Council except at Meetings thereof for making Laws and Regulations" (Sec. 40 of the Charter Act of 1833). A fifth member was added in 1861, and the sixth in 1874.

8 The first Indian to be appointed to the Governor-General's Executive Council was Mr. (later Lord) S. P. Sinha in 1909.

9 The intentions of the framers of the Act seem to have been largely nullified by including Indian members of the Services, promoted to membership of the Executive Council, as coming under this category.

10 The Commander-in-Chief has been an extraordinary member of the Council since 1793. Under Sec. 37 of the Act of 1919, however, the Commander-in-Chief may or may not be a member. If he is a member he will rank next to the Governor-General, but he is debarred from presiding over meetings of the Executive Council. His salary is Rs. 1 lakh a year.

Army portfolio. The other portfolios are (1) Home ; (2) Law ; (3) Finance ; (4) Industries and Labour ; (5) Railways, Commerce and Ecclesiastical and (6) Education, Health and Lands. The Viceroy himself holds the Foreign and Political portfolio. The members of the Governor-General's Executive Council are appointed by the Crown on the recommendation of the Secretary of State for India and their term of appointment is for five years under normal conditions.

The Governor-General appoints a member of the Executive Council as Vice-President of the Council. The Executive Council meets at places in India fixed by the Governor-General in Council. In case of any difference of opinion on any matter brought up for consideration before a meeting of the Executive Council the Governor-General in Council is bound by the opinion and decision of the majority of those present. In case of equality of votes, the Governor-General or any other person who presides has a second or casting vote. It should be noted that the Governor-General may during the absence of his Executive Council issue on his own authority any order which might have been issued by the Governor-General in Council. Such order has to be communicated to the Secretary of State.

The Governor-General has, moreover, the power, on his own authority, to adopt or reject any proposal brought forward for consideration before the Governor-General in Council, when such adoption or rejection is considered essential to securing the safety, tranquillity or interest of British India or any part thereof, even if the majority present at the meeting of the Council, dissent from that

view.[11] In such cases if any two dissenting members of the Council require that the fact of the dissent be communicated to the Secretary of State for India, a report of the proceedings is to be transmitted to him along with copies of any minutes which the members of the Council have recorded on the subject. It has been pointed out, that the decisions of the Executive Council do not always embody the independent conclusions of the members composing it, as members have, at times, been influenced by the opinion of the Secretary of State.

The Executive Council works through the departments. Each department has its secretary. The secretaries have direct access to the Governor-General. Important matters are placed before the Member in charge, who may submit any of them to the Governor-General. Certain of these matters may be referred to the Council for discussion. The portfolio system was introduced by Lord Canning.

The Montagu-Chelmsford Report recommended the appointment of Assembly members, not necessarily elected, to positions analogous to Under-Secretaries in England. Provision was accordingly made (Sec. 43A) for the appointment of Council Secretaries from among the members of the Assembly, at the discretion of the Governor-General and holding office during his pleasure, for assisting the members of the Executive Council. The Government of India had originally opposed the proposal. In March, 1922, Sir William Vincent, the then Home Member, in reply to a resolution by a European member of the Legislative Assembly requesting the Government to make such appointments, repeated the objections to such appointment from the point of view of the Government of India. He further pointed out the difficulties in which such non-official members and Government

11 This provision found in the Acts of 1786 and 1793 was repealed in the Government of India Act, 1870. This was first provided at the instance of Lord Cornwallis who wanted to make himself secure against such opposition as Warren Hastings encountered from his Council.

might be placed, as a consequence of such appointments. No such appointment has been made.

2. The Legislature

The Indian Legislature is technically composed of the Governor-General and two chambers, *viz.*, the Council of State and the Legislative Assembly. The Instrument of Instructions to the Governor-General directs that he shall carry on the administration of the central subjects in harmony with the wishes of the people as expressed by their representatives in the Indian legislature, so far as the same will appear to him as just and reasonable.

The Governor-General is not a member of either chamber of the Indian legislature. He has, however, the right of addressing the chambers and may for that purpose require the attendance of members. The Governor-General may appoint such time and place for holding the sessions of either chamber of the Indian legislature as he thinks fit and may also from time to time by notification or otherwise prorogue such sessions.

An official is not qualified for election to the legislature ; and if a non-official member accepts any office in the service of the Crown his seat becomes at once vacant. A person cannot simultaneously be a member of more than one chamber of the legislature. Similarly a person cannot be a member of a Provincial Legislative Council and a chamber of the Indian legislature. Every member of the Governor-General's Executive Council is nominated as a member of either chamber of the Indian legislature. Although he is given the right of attending and addressing the other chamber, he cannot be a member of both

chambers. A ruler or a subject of any State in India may be nominated a member of either chamber.

The Indian legislature has[12] power to make laws for all persons, courts, places, and things, within British India, for all subjects of His Majesty and servants of the Crown within other parts of India, and for all Indian subjects of His Majesty without and beyond as well as within British India. This general legislative power is subject to certain qualifications already described [13]

There are certain specified matters in which the Indian legislature has no power to make any law, unless expressly so authorised by an Act of the British Parliament. It cannot make any law repealing or affecting any Act of Parliament after 1860 extending to British India, or any Act of Parliament enabling the Secretary of State to raise money in England for the Government of India, or the authority of Parliament or the constitution of Great Britain. The previous sanction of the Secretary of state in Council is needed for legislation in certain matters. It cannot, for instance, empower any court other than a High Court to sentence to death any British subject born in Europe, or abolish any High Court. We have already pointed out how absolute is the power that the Governor-General wields by means of certification of bills, promulgation of ordinances and making of regulations.

It has been pointed out that the Indian constitution has no provision for a formal division of legislative

12 In accordance with section 65 (1) of the Government of India Act.

13 Section 67 (2) see also pp. 68-69.

powers between the centre and the provinces.[14] In practice, there is a division following closely the distinction between central and provincial subjects contained in the Schedule to the Devolution Rules. The central legislature is competent to legislate for the whole field, and once an Act has been passed, its validity cannot be questioned in a lawsuit.

The Budget is presented to both the Chambers simultaneously and discussions on the main principles take place in both chambers. It is to the Assembly, however, that the demands for grants are submitted and it is the Assembly which can grant or withhold supply.

All proposals of the Governor-General in Council for the appropriation of revenue or money in respect of such matters as interest or sinking fund charges or loans; expenditure of which the amount is prescribed by or under any law; salaries and pensions of persons appointed by or with the approval of His Majesty or the Secretary of State in Council; salaries of Chief Commissioners and Judicial Commissioners; and expenditure classified as ecclesiastical, political and defence are, however, excluded from the vote of the Indian Legislative Assembly. (Sec. 67A). Neither can any discussion take place on these subjects in either Chamber of the Indian Legislature at the time when the budget is under discussion, of course, unless the Governor-General directs otherwise.

The expenses of the department which is concerned with the relations between the Crown and the Indian States come under the head 'political', and are, therefore, excluded from the vote of the Assembly. The army expenditure is included in the 'non-votable' items. The present practice is that direction is given by the Governor-General to allow the subject to be discussed by the Legislative Assembly, though no vote on this head can be taken.

The Act also provides for the "restoration" of a rejected

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14 *Simon Report*, Vol. I.

demand for a grant, by the exercise of the special powers of the Governor-General in Council, if such restoration is considered essential to the discharge of the Governor-General's responsibilities. This power has been resorted to on several occasions. Moreover, the Governor-General is empowered in cases of emergency to authorise any expenditure considered necessary for the safety and tranquillity of British India.

All questions in either chamber of the Indian Legislature are determined by a majority of votes of the members present. The presiding member has only a casting vote in the case of an equality of votes.

In ordinary circumstances every Bill which has been passed by the originating chamber shall be sent to the other chamber. The agreement of both Chambers is required if the Bill is to be considered as passed. In cases of difference, or in special circumstances, joint sittings of the two chambers, or conferences representative of the two chambers, may be held in which matters may be discussed or voted in accordance with prescribed rules. Joint Committees may also be formed, the procedure in such cases being the adoption of a formal resolution in each Chamber, each House nominating an equal number of members.

The Joint Select Committee suggested that it might promote the political education of India if standing committees of the Legislature were attached to certain departments of Government, for consultative and advisory purposes. Standing Committees are accordingly formed from among members of the Assembly. The more important among these Committees are the one on Finance and the other on Public Accounts, the Finance member being Chairman of both. The former Committee scrutinises new items of votable expenditure and makes recommendations to the Assembly, when necessary. Though it has no executive powers, its scrutiny of expenditure, according to the Government of India's Memorandum to the Simon Commission, is "jealous,

detailed and enthusiastic". The latter Committee deals with the auditing and expenditure of both votable and non-votable items in accordance with the recommendations of the Legislature. The standing committees on Emigration and on Railways have also been useful in reinforcing the non-official viewpoints before heads of Departments.

The first hour of every meeting of either chamber is available to Members for asking questions of facts only and inviting explanations from the Government. Members have also the right of asking supplementary questions. The Government Member in charge has, however, a right to ask for a previous notice of "ten clear days" if he is not in possession of sufficient material. The power of moving resolutions affords members further opportunities to criticise the acts or omissions of the Government, and for pushing forward particular proposals especially during the budget discussions.[15] Even when carried, such resolutions are merely recommendatory. Subject to the consent of the President and the allowance by the Governor-General (if there is time to secure it), motions for adjournment may be made for discussing any definite matter of urgent public importance.

Though English is the language for transacting all business, the President may permit the use of vernacular to members unacquainted with English.

A member of the Indian Legislature is not liable to any proceedings in any court for his speech or vote or for anything published in any official proceedings of either Chamber. This freedom of speech, however, is limited by certain rules of debate

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15 Of the 91 divisions which took place in the Assembly on non-official resolutions before 1928, 51 only were in favour of Government. The Simon Report notes that the Government gave effect to about a third of the resolutions, partial effect to another third and no effect to the rest.

laid down in the Standing Orders of both the houses. The Standing Order of the Assembly lays down, among other things, that a member shall not "use his right of speech for the purpose of wilfully and persistently obstructing the business of the Council." This provision appears to be unnecessary in view of the fact that closure can be applied on the motion of any member.

The budget session of the Indian Legislature usually opens at Delhi at the end of January or the beginning of February and continues for about two months. The autumn session is held at Simla. Payment of members is in the form of a compensatory allowance for the period of attendance.

The majority of legislative measures has been in the sphere of Civil Law. Important fiscal, industrial, commercial, currency and labour legislation has also been passed. The restricted facilities of non-official business have resulted in the lapse of many Bills introduced by private members. The Council of State, too, has, in several instances, thrown out some private members' bills passed by the Assembly but opposed by Government.

(a) The Council of State

The Council of State consists of not more than sixty members. Out of these thirty-three members are elected and the rest nominated. It is laid down that not more than twenty of the members of the Council of State shall be officials. These include such members of the Governor-General's Executive Council as are nominated[16] to the Council of State. The composition of the Council of State is shown in the following table :

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16 Generally two out of the seven are nominated to the Upper Chamber.

Council of State

Province	Nominated		Elected					Total
	Officials	Non-Officials	Non-Mahomedan	Mahomedan	Sikh	Non-communal	European Commerce	
Government of India ...	11 (including President)							
Madras	1	1	4	1	...	...	...	11
Bombay	1	1	3	2	...	...	1	7
Bengal	1	1	3	2	...	...	1	8
United Provinces	1	1	3	2	...	...	...	8
Punjab	1	3	1	2[3]	1	...	..	8
Bihar & Orissa	1	...	2[3]	1	..	...	...	4
Central Provinces ...	...	2[2]	...	...	...	1	...	3
Assam	...	...	...	1	...	...	...	1
Burma	...	...	...	...	...	1	1	2
N. W. Frontier Province ...	...	1	...	...	..	...	...	1
	17	10	16	11	1	2	3	60

1 The distribution of the 27 nominated seats is not fixed, and may be varied at the discretion of the Governor-General; but the Officials cannot exceed 20

2 One of these is a member nominated as a result of election held in Berar.

3 At alternate general elections there are three non-Mahomedan seats for Bihar & Orissa but only one Mahomedan seat for the Punjab.

(The Table on this page and that on p. 83 are taken from the Simon Report, Vol. I).

The Council of State does not possess the power of electing its own President. In accordance with the terms laid down in the Act the Governor-General has the power to appoint the President from among the members of the Council of State. The President used to be a nominated official. Recently, however, Sir Maneckjee Dadabhoy, a non-official member, has been nominated.

The term of the Council of State, under normal conditions, is five years, after which there shall be a fresh election. The Governor-General has, however, the power to extend or shorten the terms of the Council of State in certain special circumstances.

The Montagu Report proposed to constitute the Council of State as a revising chamber. It did not want to introduce a true bi-cameral system. The plan was to provide "means, for use on special occasions, of placing on the Statute Book, after full publicity and discussion, permanent measures to which the majority of members in the Legislative Assembly may be unwilling to assent", through the institution of a Council of State with an official majority. The Joint Select Committee rejected the plan and wanted a proper second chamber to be established. Their plan accepted by Parliament provides that a bill which either Chamber of the Indian Legislature refuses to pass should become law, if the Governor-General certifies it to be essential for the safety, tranquillity or interests of British India.

In theory only, it may now be said, the powers enjoyed by each Chamber are co-ordinate with those of the other. In other words, though both the Chambers are said to possess conjoint powers except on the matter of voting on the items of the Finance Bill, in actual practice, the Council of State occupies a less important position than the other Chamber.

(b) *The Indian Legislative Assembly*

It is laid down that the minimum number of members of the Indian Legislative Assembly shall be one hundred and forty. Forty of these shall be non-elected, twenty-six of whom shall be official members. The constitution provides for an increase in the number of members as also a change in the proportion which the classes of members bear one to the other. But this is to be done in accordance with certain rules laid down under the provisions of the Act. Under the rules that have accordingly been framed there may be 103 elected and 41 nominated members, of whom 26 are officials, 15 non-officials and one a person nominated as the result of an election held in Berar.[17]

The Indian Legislative Assembly has a President. For the first four years Sir Frederick Whyte was appointed by the Governor-General, as President. Since the expiration of this period the President has been a member of the Assembly elected by the Assembly and approved by the Governor-General.[18] There has also been a Deputy-President, who is a member of the Assembly elected by the Assembly and approved by the Governor-General. The Deputy-President presides at meetings of the Assembly in the absence of the President.

At the beginning of every session the President of the Assembly nominates from among its members a panel

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[17] Berar is not technically British territory; it was leased in perpetuity to the Central Provinces in 1903 by an agreement between the Nizam of Hyderabad and the Government of India.

[18] Mr. Vithalbhai Patel, the first elected President, resigned during his second term (1930). He was succeeded by Sir Ibrahim Rahimatoollah, who resigned owing to illness. Mr. (now Sir) Shanmukham Chetty has succeeded him.

of not more than four chairmen. Any one of this panel may preside over the Assembly in the absence of the President and the Deputy-President. The person so presiding enjoys the powers of the President.

The normal term of every Legislative Assembly is three years. The Governor-General has, however, the power to dissolve it before the expiry of the term of three years or to extend it, in special circumstances, if he so thinks fit.

Composition of the Indian Legislative Assembly

Province	Nominated		Elected						Total
	Official	Non-official	Non-Mahomedan	Mahomedan	Sikh	European	Land-holders	Indian Commercial	
Government of India ..	14	5[1]	...	...	...	..	...	...	19
Madras	2	...	10	3	...	1	1	1	18
Bombay	2	1	7	4	...	2	1	2	19
Bengal	2	2	6	6	...	3	1	1	21
United Provinces ..	1	2	8	6	...	1	1	...	19
Punjab	1	2	3	6	2	..	1	...	15
Bihar & Orissa ...	1	1	8	3	...	...	1	...	14
Central Provinces and Berar ...	1	1[2]	3	1	...	...	1	4	7
Assam	1	...	2	1	...	1	...	—	5
Burma	1	..	3[3]	...	...	1	...	...	5
Delhi	...	...	1[4]	...	...	...	...	...	1
Ajmer-Merwara ...	..	...	1[5]	...	...	...	...	...	1
N. W. Frontier Province	...	1	...	...	...	...	...	...	1
	26	15	52	30	2	9	7	...	145

1 The five nominated non-official members here designated are not nominated as provincial representatives, but as representing the following five special interests, namely, Associated Chambers of Commerce, Indian Christians, Labour interests, the Anglo-Indian community and the Depressed classes. But the distribution of the nominated non-official seats is not fixed—it may be varied at the discretion of the Governor-General. The official membership of 26 is a fixed number, though its distribution between the Government of India and Provincial representation can be varied by the Governor-General.

2 This includes the sole member from Berar—who is elected by Berar voters but (owing to the fact that the Assigned Districts are not technically British territory) is then given a title to sit in the Assembly by the Governor-General's nomination.

3, 4, 5 These seats are filled from non-communal constituencies and the candidates need not be "non-Mahomedans".

CHAPTER SIX

PROVINCIAL GOVERNMENT

Before the introduction of the Montagu-Chelmsford Reforms the Government of India exercised control and supervision over the provincial Governments. The provincial Governments were not more than the agents of the Central Government, whose decision and policy they were to carry out. The Government of India was responsible for the entire administration of British India and the British Parliament in its turn exercised its control through the Secretary of State for India.

The present constitution sought to bring about a change in the system described above by introducing a measure of responsibility of the executive to the people in the provinces through their elected representatives in the Provincial Legislative Councils.

The provinces have been assigned specified functions which may be divided into (*a*) agency functions in relation to all-India subjects, and (*b*) provincial functions proper. The latter, according to an official memorandum, relate to subjects, in which "the interests of the provinces essentially predominate" and in which the provinces are therefore to have "acknowledged authority of their own". This, as a well-known writer[1] has said, in a mood of anticipation, marked the beginning of provincial autonomy in a sense, or of 'federalism in embryo'. The demarcation, in fact, bears much improvement. As the Muddiman Committee later found, "much clearer definition and a much closer examination of the relation between central and

[1] Sir Frederick Whyte—*India: A Federation?* p. 287.

provincial Governments would be an essential preliminary to any scheme of provincial autonomy in India."[2]

The provincial subjects are divided into two classes, namely, the reserved subjects and the transferred subjects.[3] In the reserved subjects the Governor exercises control through the executive council, an official body. The transferred subjects are administered by ministers selected from among the elected members of provincial councils.

The following are among the provincial reserved subjects: land revenue and land laws; famine relief, irrigation, water supply, water power; forests (transferred in Bombay and Burma); administration of justice, including civil and military courts; police and prisons; factory inspection and labour matters in general and also matters in the jurisdiction of the Central Government in which the Provincial Government acts as agent.[4]

The following are among the provincial transferred subjects: excise duties on liquor and drugs; local self-government; education, other than European and Anglo-Indian; sanitation, public health, vital statistics, hospitals, asylum, and provision for medical education; public works, including light railways; development of industries, including research and technical education; agriculture, including research; civil veterinary matters; and co-operative societies.

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2 *Reforms Enquiry Committee* (1925), Majority Report, p. 43.

3 According to the provisions of Sec. 45 (A), (C), (D) rules have been made for the "transfer, from among provincial subjects, of subjects to the administration of the Governor acting with ministers appointed under this Act, and for the allocation of revenues or moneys for the purpose of such administration". This method of distribution by rules has the great merit of allowing for extension of the list of transferred subjects, of course, at the discretion of the Executive. It was in accordance with this provision that Mr. Jinnah, Sir Sivaswamy Aiyer, and Dr. Paranjpye, proposed in their dissenting report to the Reforms Enquiry Committee, "to transfer all subjects except Law and Order, subject to such adjustment and further definition of Central and Provincial subjects as might be determined".

4 Devolution Rule 46 requires the performance of agency functions, the cost of which is borne by the Central Exchequer.

1. The Executive.

The intention of the present constitution was that in transferred matters, legislation should be carried out with the approval of the Legislative Council. In extraordinary circumstances, however, the Governor has power to overrule the ministers in the transferred departments and carry out his own policy. In such cases in which a ministry cannot be formed to carry out his policy the Governor has the power to assume control of the transferred departments and authorise expenditure not sanctioned by the legislature.

Similarly, although in normal circumstances, the Governor acts on the advice of his executive council in reserved subjects, he has power to overrule the executive council. In the reserved departments also the Governor has, in circumstances that he might consider emergent, power to adopt legislation and authorise expenditure not approved by the Legislature.

The assent of the Governor, as well as that of the Governor-General, is required in case of Acts of the provincial legislature. The Governor may, in cases in which a Bill has been passed by the provincial Legislative Council, instead of declaring that he assents to, or withholds his assent from the Bill, return it to the Council for reconsideration either in whole, or in part, together with any amendments which he may recommend, or reserve the Bill for the consideration of the Governor-General. The Governor has also the power to pass a Bill relating to a reserved subject in case of the failure on the part of the provincial Legislative Council to pass it, if he thinks such action essential to the discharge of his responsibility for the subject. It is laid down that when an Act has

been assented to by the Governor-General, he shall send to the Secretary of State for India an authenticated copy of the Act. Finally, His Majesty in Council has the power to disallow Acts of provincial Legislative Councils.

A very elaborate procedure has been laid down in such cases. The point to be borne in mind is that the Governor-General has the power of disallowing a bill, even though passed by the provincial Legislative Council, or of passing a measure rejected by the Council, in cases he thinks such action essential for the discharge of his responsibility for the subject. It was, however, the intention of the constitution that both in transferred and in reserved subjects efforts should be made to give effect to the wishes of the legislature.

The provincial governments have to keep the Governor-General in Council constantly and diligently informed of their proceedings and to furnish such information as may be required.[5] The Devolution Rules lay down certain limits to the powers of superintendence, direction and control over local governments possessed by the Governor-General in Council over the transferred subjects. This control is to be exercised for the following purposes : (1) to safeguard the administration of central subjects, (2) to decide questions arising between two provinces, in cases where the provinces concerned fail to arrive at an agreement; and (3) to safeguard the due exercise and performance of any powers and duties possessed by, or imposed on, the Governor-General in Council under, or in connection with certain provisions of the Act.[6]

Over the reserved subjects, however, the scope of control by the Governor-General is unlimited. The Montagu Report laid down the policy to be followed as given below : "We recognise that in so far as the provincial Governments of the future will still remain partly bereaucratic in character, there can be no logical reason for releasing the control of the superior official authority

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5 *Vide* Devolution Rule 5; Secs. 33 and 45 of the Act of 1919.
6 Also see sec. 29(A), 30(A); Part VII-A; Devolution Rule 49.

over them nor indeed would a general relaxation be approved by Indian opinion, and that in this respect the utmost that can be justified is such modification of present methods of control as aims at getting rid of interference in minor matters which might very well be left to the decision of the authority which is closely acquainted with facts".[7]

There are altogether ten governor's provinces. These are Bengal, Bombay, Madras, the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, Assam, Burma and the North-West Frontier Province. In each of these provinces there is a Governor's Council. The number of members of the executive council is not the same in every province. The executive councils in Bengal, Bombay and Madras, for instance, have each four members.[8] Two of these are members of the Indian Civil Service and two appointed from among non-official Indians. The United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, Assam and Burma have each two members of the executive council, one a member of the Indian Civil Service, and the other appointed from among non-official Indians. In the N.-W. F. Province there is only one member of the executive council and one minister.

In January, 1932, the Governor General announced that the N. W. F. Province will be constituted into a Governor's Province, subject to the following modifications: (*a*) that the number of

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7 Para 213.

8 The Bombay Reorganisation Committee (1933), recommended a reduction in the number of members of Government. been reduced in Bombay.

9 The Act provides that one of the executive councillors must have been in the service of the Crown in India for twelve years. There is nothing about the number of Indian and European members, and thus there is no legal bar to all the members being Indian. In practice, a half-and-half arrangement has generally been given effect to.

members of the Legislative Council shall be forty only; and (*b*) that the maximum annual salary of the Governor shall be Rs. 66,000 and of the member of the executive council Rs. 42,000.

The Governor is not paid the same salary in all the provinces. In a similar way the members of the executive council do not get the same salary in all the provinces. In the three presidencies, Bengal, Bombay and Madras, the Governors are appointed from among British public men ; and in the other provinces generally from among the senior members of the Indian Civil Service.[10] The Provinces of Delhi, Ajmer-Merwara, Coorg, and Beluchistan are governed by Chief Commissioners.

All the provinces have not the same number of ministers. It is provided that there may be paid to any minister so appointed in any province the same salary as is payable to a member of the executive council in that province, unless a smaller salary is provided by a vote of the Legislative Council of the province. In Bengal, the entire demand in respect of Ministers' salaries was refused in 1924 ; in C. P. the Council reduced the salary to Rs. 2. Under this curious situation created by the obstructionist tactics of the Swarajists, the Governor came to the rescue of the Ministers. The common method of censuring by the refusal of salaries has in cases been thus rendered ineffective. In such cases, the ministers have been placed almost on the same footing with the members of the executive council in the matter of salary. With a view to setting an example of economy in expenditure some of the provincial Legislative Councils have, in sanctioning

10 In Bihar and Orissa an Indian publicman, Lord Sinha was for the first time appointed as Governor (Dec. 1920; resigned Nov. 1921). But since he resigned, no Indian has been so appointed except in temporary vacancies.

salaries for ministers, fixed a lower rate than that of members of executive councils.

The 'dyarchic' system is based on the conclusion of the Montagu Report that complete responsibility for provincial government "cannot be given immediately without inviting a breakdown". But the working of the system for a short period led to an agitation for an advance. The entry of the Swarajists in the legislatures after 1923 exposed the inherent weakness of the system and the Government of India appointed the Reforms Enquiry Committee with the Home Member, Sir Alexander Muddiman, as Chairman.[11] The majority of the Committee expressed the opinion that with the short and chequered experience of the working of the system, no decision as to its ultimate success could be taken. The minority, however, declared that dyarchy had demonstrably failed and could not succeed. Nothing short of a fundamental change of the constitution could, in their view, secure an improvement. In his evidence before the Committee, Mr. Sachchidananda Sinha, then Member of the Executive Council of Bihar and Orissa, quoted the observation of Lowell that the 'foundation of government is faith and not reason'. Dyarchy, he affirmed, had failed to evoke that faith.

Complaints regarding the excessive powers of veto and interference exercised by Governors were made before the Reforms Enquiry Committee. Both the majority and minority reports pointed out that such interference was intended to be exceptional. This had also been the view of the Joint Parliamentary Committee. That Committee observed that even when the Governor thought that a minister's policy was mistaken, the latter should be given full liberty to work out his plans, for "there is no way of learning excepting through experience and the realization of responsibility."

In actual practice the Governors cannot, in many cases, be said to have played the role of constitutional heads over transferred subjects. The position of ministers

11 The Majority Report was signed by the Chairman, the Maharaja of Burdwan, Sir Muhammad Shafi, Sir Arthur Froom and Sir Henry Moncrief Smith. A Minority Report was submitted by Sir Tej Bahadur Sapru, Sir Sivaswamy Aiyer, Mr. M. A. Jinnah and Dr. R. P. Paranjpye.

has been characterised as that of members of the executive government, who are not members of the executive council.

The original provision in the Government of India Bill was that the Governor should be "guided by the advice of the *minister* in charge of the subject". This was changed by the Joint Select Committee in accordance with the parliamentary tradition of joint ministerial responsibility. The formula adopted was that "in relation to transferred subjects the Governor shall be guided by the advice of *his ministers.*"

In Madras, the strength and policy of the 'Justice' Party made it possible to form ministries with a Chief Minister. In other provinces serious efforts to establish the principle of joint ministerial responsibility were not made. In one or two cases, however, ministers have resigned along with their colleagues.[12] But so long as ministerial responsibility and control do not extend to the whole field of administration such tradition cannot develop.

It was intended that the two halves of government were to 'jointly deliberate on matters of common concern'. Such deliberations could not partake of the character of 'Cabinet' discussions, so long as neither side was responsible for the other's administration. Mr. Montagu himself had, in moving the second reading of the Government of India Bill, stated clearly that it was absolutely essential that there should be opportunities for influence and consultation between members and ministers. This was, in his opinion, the logical arrangement, as all the reserved departments were to be transferred in due course.

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12 In U. P. Pandit Jagat Narain resigned with Mr. Chintamani on a matter arising in the latter's department. In Bengal, though, Mr. B. Chakravarti accepted in 1927 the vote of no-confidence in his colleague Mr. (now Sir) A. K. Ghuznavi as a censure on the ministry, the Council passed a separate censure on him also.

In Madras during the first two years and a half of dyarchy, as against 114 joint meetings, 7 separate meetings of the executive council only were held. In Bengal, Government found it convenient gradually to follow the policy of joint consultation of the two halves, as in the peculiar circumstances of the province, the ministers were enabled to maintain their position mainly with the support of the official *bloc* and the nominated element. In no other province has this principle of joint deliberation been followed to this extent.

The rarity of an assured elected majority in support of ministers, has created the feeling that a minister is a "Government man". This explains the phenomenon, noted by the Simon Report, that the appointment of the leader of a group to ministerial office has often undermined his authority over his followers. Thus the executive councillors and ministers have often been thrown together, each relying more or less on the support of the other, thereby hopelessly obscuring the intentions of dyarchy.[13]

The theory of the Reformed constitution was that the ministers, without being answerable for the reserved departments or for the policy associated with the reserved side, were to be jointly responsible to the elected legislature in respect of the transferred half of the Government. But, even the Simon Commission are constrained to observe in their Report that it has proved impossible to translate this theory into practice. The Report states : "The intention of dyarchy was to establish, within a certain definite range, responsibility to an elected legislature. If this intention is not carried out, the justification for the constitutional bifurcation and for all the complications which it brings in its train is difficult to find. In the light of experience, it may be doubted whether the object aimed at could be attained as long as both halves of Government have to present themselves before the same legislature."[14] In fact, a few instances have occurred (mainly in

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13 *Simon Report*, Vol. I.
14 *Simon Report*, Vol. I, Part VI, Ch. 2.

the United Provinces) of members of the executive council actually voting against ministers and ministers against members of the executive council. This was hardly surprising in view of the fact that the ministers were statutorily responsible to the voters, and the members of the executive council to the higher executive. While ministers could be dismissed by the Governors, the members of the executive council had no such risk.

Further, secretaries of departments have the right of direct access to the Governor. Heads of departments have also this right, which is very often exercised by heads of major departments. This has undermined the authority of ministers and has been prejudicial to the growth of constitutionalism.

The control over the crucial department of Finance has been in the hands of the executive branch. Though there is no statutory provision for the allocation of revenues between the two halves, the Joint Select Committee recommended that the Governor shall allocate a definite proportion of the revenues, say by way of illustration, two thirds to reserved and one third to transferred subjects. On the Governor devolved the task of finally adjudicating between the demands of both sets of his advisers, while his direct responsibility to Parliament was only for the reserved half. The system has been found, in this circumstance, to be detrimental to the interests of the transferred half. As a minister[15] observed, "without the power over purse, others consider as if I am simply a clerk to prepare a certain scheme and after that scheme is ready, the Finance Department is entitled to knock it down on the ground of want of fund."

15 The late Sir Mohamed Fakharuddin (Bihar & Orissa), in a speech in the Provincial Legislative Council, March, 1927.

Nor has the principle of bifurcation of Government into two water-tight compartments proved workable. The two halves are bound to react on each other. Sir Kurma Reddy, while a minister of the Madras Government, illustrated the anomalous situation very succinctly. He said that he was minister of Agriculture minus Irrigation and minus the administration of the Agricultural Loans Act. The minority report of the Muddiman Committee went so far as to characterise this mutually exclusive division of subjects as the inherent defect vitiating the whole system of dyarchical government.

2. The Legislature

In accordance with the terms of the Government of India Act, the provincial Legislative Council has the authority, subject to certain conditions, to make laws for the peace and good government of the province. It can also, subject to certain conditions, repeal or alter laws made either before or after the commencement of the Act by any authority in British India other than the provincial Legislative Council. The Council cannot, however, without the previous sanction of the Governor-General make, or take into consideration, any law affecting such matters as imposing or authorising the imposition of any new tax, other than those which have been specifically exempted from this provision by rules ; the public debt of India ; the customs duties, or any other tax which the Government of India is authorised to impose ; the relation of the Government with foreign powers or states ; the discipline or maintenance of any part of His Majesty's Naval, Military or Air Forces ; or affecting any power expressly reserved to the Governor-

General in Council or legislation reserved for the central legislature.

There are, besides, certain subjects on which the power of voting and discussion has been withheld from the Council. These are (1) interest and sinking fund charges on loans, (2) expenditure of which the amount is prescribed by or under any law, (3) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council, (4) salaries of the Judges of the High Court of the Province and of the Advocate-General.

The Governor enjoys emergency powers of authorising such expenditure as may, in his opinion, be necessary for the safety or tranquillity of the province, or for carrying on the work of any department. The latter proviso is extremely wide and may be interpreted to include expenditure in regard to transferred departments also.[16]

The Governor's power of certification, like that of the Governor-General, is both preventive and affirmative. The progress of a Bill may be stopped, if such Bill or any part of it is certified by the Governor, as detrimental to the safety and tranquillity of his province. The affirmative power may be exercised when the Council has refused leave to introduce, or has failed to pass in a form recommended by the Governor, Bills relating to *reserved* subjects, if such action is considered essential for the discharge of his responsibility. The Governor-General enjoys a much more extensive and undefined power in this respect, for he is empowered to certify any Bill, if it is considered to be "essential for the safety, tranquillity or interests of British India or any part thereof." The provision regarding Acts certified by the Governor-General, requiring them to be laid on the table of each House of Parliament for eight days applies in the case of certified Provincial Acts also.

The usual term of a provincial Legislative Council is

16 Lord Lytton in consonance with constitutional practice refused to restore demands in regard to the medical and educational heads of the budget.

three years. The Governor has, however, power to extend the period, in special circumstances, or dissolve it before the expiry of the usual period. In the latter case a new Council is to be constituted within six months, or with the sanction of the Secretary of State, within nine months from the date of dissolution.

For the first four years the President of a provincial Council was appointed by the Governor. The Deputy President has from the inauguration of the new constitution been an elected member of the Council. Since the expiry of the first four years the provincial Councils have enjoyed the power of electing their own Presidents.

The Government of India Act of 1919 provides that at least 70 per cent. of the members of provincial Legislative Councils shall be elected members and that not more than 20 per cent. shall be official members. In the case of Burma the percentage of elected members is to be at least 60 per cent. An "official" according to the Act is a person in the wholetime civil or military service of Government and remunerated as such. A certain number of official members are nominated by the Government to serve on the provincial Legislative Council. The number of nominated officials and non-officials varies from time to time. The figures quoted in the table on the next page cannot, therefore, be treated as constant.

It has to be borne in mind in this connection that the changes in the constitution of the provincial government and legislative council in Burma were introduced in 1923 and not simultaneously with the constitutional reforms introduced in 1921. The inauguration of the N. W. F. Legislative Council was made on April 20, 1932.[17]

17 Since 1923, Coorg also has a Legislative Council of 20 members, five of whom are nominated. The Council has legislative, deliberative and interrogatory powers.

A table is given below showing the manner in which the different provincial Legislative Councils are constituted :

Provinces	Statutory Minimum	No. of Elected Members	Nominated Officials including Executive Councillors	Nominated Non-officials	Total
Bengal	125	114	12+4	10	140
Madras	118	98	7+4	23	132
Bombay	111	86	15+4	9	114
United Provinces	118	100	15+2	6	123
Punjab	83	71	13+2	8	94
Bihar and Orissa	98	76	13+2		103
Central Provinces ..	70	55	8+2	8	73
Assam	53	39	5+2	7	53
Burma	92	80	14+2	7	103
N. W. F. Province ...	40	28	5+1	6	40

CHAPTER SEVEN

THE FRANCHISE

In a significant passage in the Report on Indian Constitutional Reforms, its distinguished authors declared that the time had then come when the "sheltered existence" that Britain had given to India could not be prolonged without damage to her national life. Britain had, they said, a richer gift for India than she had yet bestowed on her. The nature of this gift was indicated in their own words that bear no dubious meaning. Nationhood in the Empire, according to them, represented something better than anything India had hitherto attained. They added: "Obviously there is much to change. The habits of generations have to be softened if not overcome ; we have to call forth capacity and self-reliance in the place of helplessness, nationhood in place of caste or communal feeling. . . . The task is a great and worthy one, but it calls for some effort and self-sacrifice from every element in the community."[1]

The object that the Montagu Reforms had in view had elsewhere in the British Empire and in self-governing communities in other parts of the world been attained by popular self-government. The basis of such government was universally recognised to be a fair and equitable system of franchise. It must be recognised that however limited in scope, it was also with this end in view that the Montagu Report proposed to sweep away the system of

1 Chapter VI, *The Conditions of the Problem,* paras. 144-145.

indirect elections and extend the franchise. The Report, however, emphasised the need for caution against "any inordinate and sudden extension of the franchise which might lead to a breakdown of the machinery through sheer weight of numbers."[2] The elections in India in recent years have been one of the factors in making the people politically-minded.

A Franchise Committee with Lord Southborough as President,[3] reported in February 1919. The recommendations of the Committee largely determined the details of the existing electoral arrangements in the centre and in the provinces. The Committee laid down certain disqualifications of electors. They proposed to disqualify women,[4] persons under 21 years of age, subjects of any foreign state (but not of an Indian State), and persons of unsound mind. A person convicted of certain offences under the Indian Penal Code or guilty of corrupt election practices is disqualified from voting for a period of five years, unless such disqualification has been removed

2 Para 226.

3 The Committee included Sir Frank Sly, Messrs. Malcolm Hailey, Srinivasa Sastri, Surendranath Banerjea, M. N. Hogg and Sahibzada Aftab Ahmed.

4 Mr. Hogg in the Southborough Committee and Sir Sankaran Nair in the Viceroy's Executive Council expressed themselves against this bar. Under the electoral rules now in force in India, women may be enfranchised for elections to provincial legislatures if a resolution is passed to that effect by a local Legislative Council, after giving a month's notice to move such a resolution. Similar powers were given to the Assembly and the Council of State, for provinces where the sex-disqualification had been removed. But as the same qualifications were prescribed for women as for men the proportions of men and women enfranchised in the provinces where the bar has been removed, are as follows: Madras, 10·1; Bombay, 19·1; Bengal, 26·1; United Provinces, 29·1; Punjab, 29·1; Bihar & Orissa, 62·1; Central Provinces, 25·1; Assam, 114·1. *Report of the Lothian (Indian Franchise) Committee*, 1932, Chap. VIII.

by the Governor-General in Council or the Local Government as the case may be.

The qualifications of electors are based upon the principle of residence within the constituency and the possession of certain property as indicated by the payment of land revenue, rent or local rates in rural areas, of municipal rates in urban areas, and of income-tax generally. All retired and pensioned officers of the Indian Army also enjoy the franchise. The Southborough Committee did not impose any literacy test. The standard of property qualifications differs from province to province, and also within the same province between different communities, "where the social and economic differences justified the discrimination". No person is allowed to have his name registered on the electoral roll of more than one general constituency, but a person may vote in more than one *special* constituency, if he possesses the requisite qualifications in respect of them.

A candidate for election or nomination to the central or provincial legislature, must not only satisfy the voter's qualifications but also must not have been sworn in as a member of any legislative body, must not be less than 25 years of age, or must not be an insolvent, or a dismissed or suspended legal practitioner. Besides, certain special qualifications are required for election to the Council of State, the Legislative Assembly and the provincial Councils in the case of candidates from communal and special constituencies.

Rules have been framed for the final decision of disputes as to the validity of an election, under the Government of India Act.[5] A special law, the Indian Elections

5 *Vide* Electoral Rules.

Offences and Inquiries Act (1920) has also been enacted, providing for the punishment of certain acts which directly or indirectly interfere with the purity of elections. Instances of such offences are bribery, treating, undue influence or personation at an election, false statements in connection with an election, the failure to keep proper election accounts, etc.

Any person may be nominated a candidate for election in any constituency for which he is eligible for election. On or before the date fixed for nomination, each candidate has to deposit with the Returning Officer a sum of Rs. 250/-. In case of candidates for seats in the Indian Legislature the required deposit is a sum of Rs. 500. If a member does not secure even one-eighth of the total number of votes polled, the deposit will be forfeited to the Government. Members of the legislature, both central and provincial, have to take an oath of their allegiance to the Crown before they take their seats.

Electorates in Provinces

In the case of a provincial Legislative Council, apart from residence and community, electoral qualifications are based on occupation of a house, or assessment to property-tax on companies, or to profession tax, or to income tax, or military service, or the holding of land, or as in the case of Bengal, Assam, Bihar and Orissa, the payment of local rates.

Ordinarily, a tentative electoral roll is first published. Necessary corrections of mistake or omission are made on the result of representations to the Revising Authority, and a revised electoral roll is published, which continues in force for a period of three years.

A province is divided into a number of separate electoral districts. The general constituencies are divided into several classes. In Bengal, for instance, general constituencies are divided into four classes, namely, Mahomedan, Non-Mahomedan, European and Anglo-Indian. In each, both the elector (or voter) and the individual who is a candidate for election must belong to the particular class. This means that a Mahomedan candidate is to be returned by an electorate consisting of Mahomedan voters, a European by a European constituency and so on. General constituencies are again divided into two groups, namely, urban and rural.

In addition to general constituencies there are special constituencies. In Bengal these constituencies are of three classes, namely, (*a*) landholders, (*b*) commerce and industry, and (*c*) university constituencies. Further, the Governor nominates a certain number of members both from amongst officials and non-officials. For the purpose of any Bill, not more than two experts may also be nominated in addition.

The franchise is planned predominatingly on communal lines. The communal principle was extended to the Sikhs in the Punjab, to non-Brahmins in Madras, and to 'Mahrattas and allied castes' in Bombay.[6] For the depressed classes further representation by nomination was proposed. The seats allotted to the depressed classes,

[6] In Madras, out 65 non-Mahomedan seats, 28 are reserved for non-Brahmins, and in Bombay, 7 out of 46 non-Mahomedan seats are reserved for 'Marathas and allied castes'. The Sikhs have 17·9 per cent. of the communal seats, though they constitute 11·1 per cent of the population of the Punjab. The number of Sikh voters is also comparatively large, because the community includes a large number of prosperous farmers and ex-soldiers.

through nomination, in the different provinces were as follows:—Madras 10, C. P. 4, Bombay 2, Bihar & Orissa 2, Bengal 1, and U. P. 1. Special provision for nomination to secure the representation of labour was also made. Indians and the Karen community in Burma enjoy separate electorates in that province. Separate electorates have also been created for such other communities as Indian Christian, Anglo-Indian and European.

A University seat is provided in each province except Assam and the North West Frontier Province ; Bengal has two such seats.

It has been calculated on the basis of the 1921 census figures, that the percentages of electors to population (both male and female) in the provinces are : Bombay 5·9, Assam 33·7, U. P. 3·5, Punjab 3·4, Madras 3·2, Bengal 2·5, C. P. (including Berar) 1·3, Bihar and Orissa 1·1 and Burma 17·4. In the N. W. F. Province about 4 per cent. of the population appears to have been enfranchised. Where women have been enfranchised the percentage of female electors to adult female population is : Madras 1, Bombay ·8, Punjab ·5, U. P. ·4, Bengal, ·3, Assam ·2, and Burma 4·6.*

Administrative difficulties, the incidence of illiteracy and the limited number of persons available to act as Returning Officers to manage elections over large areas, are said to account for the difference from province to province in the matter of franchise. Moreover, the property qualification which is the basis of franchise, has given a predominance if not a monopoly of votes to

* The figures in this chapter are mostly taken from the *Simon Report*, Vol. I.

certain classes of population. The general body of the poor, especially in the rural areas, and women have mostly been shut out from the franchise. For instance, there has been a total exclusion of the Punjab tenants, of the under-tenants in Bengal and C. P., and the tea garden employees in Assam. Junior members of joint Hindu families also have no votes,—a situation which illustrates a great lack of comprehension of the Indian social and economic structure on the part of the framers of the franchise proposals.

The narrowness of the franchise is indicated in the following figures for 1926:

Size of Constituencies	Population	Electors	Area (in sq. miles)
Largest			
Non-Moslem rural ...	3,110,000	114,100	4,700
Non-Moslem urban ...	500,000	50,000	....
Moslem rural ...	1,004,000	28,000	7,100
Moslem urban ..	234,000	21,800	... ..
Smallest			
Non-Moslem rural ...	76,000	2,000	700
Non-Moslem urban ...	40,000	1,800	...
Moslem rural ...	50,000	600	600
Moslem urban ...	26,000	1,600	...
Average			
Non-Moslem rural ...	550,000	14,600	2,500
Non-Moslem urban ...	126,000	9,800	...
Moslem rural ...	352,000	8,000	4,700
Moslem urban ...	104,000	7,000	...

Central Electorates

The qualifications of an elector for a general constituency of the Council of State are based on (*a*) residence and community, and (*b*) the holding of land, or payment of income-tax or past or present membership of a legislative body, or past or present tenure of office on a local authority, or past or present University distinction, or the tenure of office in a co-operative banking society or the holding of a title conferred for literary merit (such as Shams-ul-ulema or Mahamahopadhyaya). The unusually high property qualifications have made the representation of wealthy merchants and landowners easier.

For the Indian Legislative Assembly the qualifications of an elector are based on (*i*) community, (*ii*) residence, and (*iii*) (*a*) ownership or occupation of building, or (*b*) assessment to or payment of municipal or cantonment rates or taxes, or local cesses, or (*c*) assessment to or payment of income tax, or (*d*) the holding of land, or (*e*) membership of a local body.

Of the 105 elected members of the Assembly, 73 are returned by rural constituencies of which none is less than 6000 square miles in area. The largest non-Muslim rural constituency is 62,000 square miles in area. One of the non-Muslim rural constituencies includes a population of 5 millions. Three Muslim constituencies in Madras cover 10,000, 48,000 and 83,000 square miles, i.e., about half as large again as Wales, Scotland and England respectively. The difficulties of distance between the constituencies and Delhi are also not insignificant. The elected members of the Assembly are returned by 1⅛ million voters, out of a population of 240 millions.

In the Council of State 34 members represent

electorates having a total of about 20 thousand voters. In 1920, 25 per cent. of voters for the election to the Assembly went to the polls, the percentage increased to 42 per cent. and 48 per cent. respectively at the succeeding elections. The Council of State electorates voted to the extent of 45 per cent and 55 per cent respectively in 1920 and 1925 elections. In both cases, the percentage would have been higher but for the abstention of large numbers of Burmese voters. The number of women voters of the Assembly is insignificant in comparision with the male voters.

The figures for elections testify to the readiness of voters to register their votes. From the "relatively high level of voting at elections" the Simon Commission conclude that "electoral contests do really attract the interest of the general body of voters". The Commission appear to think that the absence of any organised party system in India, barring the Congress Swarajists and the 'Justice' Party in Madras, has made these contests more of persons than of policies.

Communal Representation

The Montagu Report declared that communal electorates were opposed to the teaching of history; that they perpetuated class-division, and stereotyped existing relations : and that they constituted "a very serious hindrance to the development of the self-governing principle". Nevertheless the past assurance to the Moslems, the 1909 arrangements for elections, and the Lucknow Pact of 1916 between the Hindus and Moslems, the authors of the Report argued, made facts too strong for them. "Much as we regret the necessity", they further said, "we are convinced that so far as the Muhammadans at all events

are concerned the present system must be maintained until conditions alter, even at the price of slower progress towards the realisation of a common citizenship". "We conclude unhesitatingly," they added, "that the history of self-government among the nations who developed it, and spread it through the world, is decisively against the admission by the State of any divided allegiance, against the State's arranging its members in any way which encourages them to think of themselves primarily as citizens of any smaller unit than itself".

The constituencies were divided generally into two parts, Mahomedan and non-Mahomedan. The Southborough Committee taking the Lucknow Pact as the guide, gave the Moslems representation considerably in excess of the population ratio in the provinces where they were in a minority.[7] Though it recommended communal representation in certain cases, the Committee observed that they had done so in the hope that it would be possible at no very distant date to merge all communities into one general electorate.

It must be noted that the recommendation of the Montagu Report was that in the provinces where the Mahomedan voters were in a majority there was no reason to set up communal representation. It does not appear that the spirit of this salutary principle has been loyally followed. Although Mahomedans constituted a majority both in Bengal and in the Punjab, communal electorates were set up in these provinces also.

7 *Report on Indian Constitutional Reforms* (1919), paras 227-32; and Note on the History of Separate Muhammadan Representation in the *Report of the Indian Statutory Commission* (1930), Appendix V, Vol. I.

"One result of such a method is" the Simon Report says, "that the contribution from a given source is practically fixed in amount; a community gets its guaranteed number of members and no more, save that a little common ground is provided by the landholder constituencies, certain trade seats and the universities. Representation of rival communities and different interests is the only principle upon which it has been found possible to constitute, by the method of direct election, the legislative bodies of India and this is the more significant as the authors of the Montagu-Chelmsford Report manifestly struggled against it."[8]

The Simon Commission, however, acknowledge that communal representation is "an undoubted obstacle in the growth of a sense of common citizenship", and further maintain that it is open to all the objections formulated in the Montagu-Chelmsford Report. The extension of the principle of communal representation in the legislatures has been followed by increasing demands for its application to other spheres of administration. As a consequence, the small measure of responsibility that was accorded has been rendered in the main ineffective. The working of the constitution for over a decade proves beyond doubt that the introduction of this principle has been one of the principal causes of the failure of the reforms.

8 *Report of the Indian Statutory Commission* (1930), Vol. I, Part II, Chap. IV, and Part III, Chap. I.

BOOK III

ADMINISTRATIVE PROBLEMS

CHAPTER EIGHT

THE JUDICIAL SYSTEM

The present judicial system of India has slowly developed from the rough and rude methods introduced by the East India Company on their assumption of the reins of government. The judicial methods at first brought into use by the British were adapted from the Mughal system of administration of justice then in force. The first beginnings were made in Bengal, and the results of the experiments made there were generally applied to other centres of British influence in India.

Pre-British Judicial Administration

The basic idea of the Mughal system of judicial administration was that the sovereign was the supreme head of the judiciary and that it was his duty to try cases in open court. Further, as Mahomedan law was based on the precepts of the Koran and as the Koran was believed to owe its origin to divine inspiration, such law was considered to be sacred and immutable. Mahomedan rulers followed the practice of entrusting the interpretation and elucidation of the laws to the Kazis. As the ideas and notions of Kazis changed with changing circumstances, the practice naturally gave rise to bewildering incongruities and contradictions. "The main defect of the department of law and justice was that there was no system, no organisation of the law courts in a regular gradation from the highest to the lowest, nor any proper distribution of courts in proportion to the area to be served by them".[1] Attention was mainly devoted to revenue and criminal matters. The dispensers of justice in Mughal India had always to seek for light and inspiration from the decisions of

1 Jadunath Sarkar—*Mughal Administration*, p. 107.

jurists and Kazis of past days and of others living in the principal centres of Islamic thought and civilisation outside India.

At the time when the East India Company came into power the indigenous methods of settling differences in old village communities had not died out. The existing practice was that the headman to whom disputed matters were referred, settled unimportant disputes himself. In matters of importance, however, he secured the help of a council of elders. Important reports by early British administrators in India speak of the headman as the main judicial authority of the village. In a report on the judicial powers of village headmen, the Court of *Sadar Dewani Adalat,* the principal Civil Court under the East India Company wrote : "Every encouragement should be given to . . . . the heads of villages to arbitrate and settle as *heretofore* any trivial disputes between the inhabitants of their respective villages, which may be voluntarily submitted to their adjustment and award".[2] This points to two things. First, that the ancient method of settling disputes in civil and criminal matters in village communities still existed in many parts of India and, secondly, that this method was in the main the indigenous Hindu method.[3]

It has, however, to be borne in mind that, neither Hindu law nor Mahomedan law of the present day, bears any relation to the actual conditions and circumstances of the time. Both the systems had originated in earlier times and although both time and circumstances had changed, the systems practically remained as rigid as they were when they were first enunciated.

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2 Matthai—*Village Government in British India.*

3 The extant literature on the subject bears testimony to the fact that Hindu India possessed many jurists and lawgivers beginning with Manu. Although it is claimed that the Hindu system of law had many merits, its chief defect was its class differentiation. On the whole just and well-balanced, this, in Sir Hari Singh Gour's opinion, was the only blemish observable in the code. "But this is a foible", he adds, "from which none of the canonical laws are free, and indeed, if the gaze be confined to the present day, whenever there is a conflict of races the dominant race will be found to have directly or indirectly ensconced themselves behind the wall of privilege from which the proletariat are ruthlessly excluded".—Introduction to *The Penal Law of India* (1928).

Development under the Company

Queen Elizabeth's Charter (1600) empowered the Company to make all arrangements for the adjudication of cases between Englishmen in the settlements under their control. This power was soon extended also to such Indian settlers as placed themselves under the protection of the English merchants. The administration of civil and criminal justice was in the beginning based on British laws.

In 1726 a Mayor's Court with civil jurisdiction was constituted at each of the three centres, Calcutta, Bombay, and Madras. The Mayor and 9 aldermen constituted the court. Seven of the aldermen and the Mayor were required to be natural-born British subjects. Appeals from the decision of the Mayor's Court lay to the Governor (or the President) and Council constituted as a court. The court of the Governor and Council was also authorised to hold sessions for the trial of offences other than treason. The Charter of 1753 modified these arrangements in certain particulars. In addition to the Mayor's Courts, Courts of Requests were set up at Calcutta, Bombay and Madras for the trial of petty cases. Except in cases in which the parties agreed, suits between Indians were definitely excluded from the jurisdiction of the Mayor's Courts.

It is noteworthy that even after Plassey and the grant of *Dewani,* the administration of criminal justice even so far as it concerned the British servants of the Company, continued to be conducted under the supervision of the Nawab of Murshidabad.

During the governorship of Warren Hastings (1772-85) important changes in the system of administration of justice were introduced. In each district a civil court was established. It was composed of the collector of revenue and a Dewan, and the Dewan was invariably an Indian. Disputes, real or personal, causes of inheritence, marriage and caste, claims of debt, disputed accounts, contracts and demands of rent were decided by these

courts. The courts were known as *Mofussil Dewani Adalats*. Similarly, courts were also established in each district for the adjudication of criminal cases. These were known as *Foujdari Adalats* or Courts of Criminal Judicature. In these courts cases were tried by a Kazi and a Mufti, helped by two Maulvies who expounded the law, under the superintendence of the collector of revenue.

A civil court of appeal called the *Sadar Dewani Adalat* was established to exercise appellate civil jurisdiction over the provincial courts in all cases in which the suits were of higher value than Rs. 500. The Court was composed of the President and members of Council, and was assisted by Indian officers. There was also a committee of circuit consisting of the Governor and four members of Council.

Similarly, a criminal court of appeal called the *Sadar Nizamat Adalat* was established. A Daroga, a Chief Officer, assisted by a Chief Kazi, a Chief Mufti and three Maulvies, decided the cases. The court was established at Murshidabad. But it was soon after removed to Calcutta and placed under the immediate superintendence of the President and Council. The Court was again transferred to Murshidabad in 1775. During the fifteen years the court was stationed there, the administration of criminal justice was kept entirely under the control of the Nawab Nazim.

A Royal Charter granted in 1774, in pursuance of the Regulating Act of 1773, brought into existence in Calcutta a Supreme Court. The Chief Justice and the judges were to be appointed by the British Crown and they were to be members of the English or Irish Bar of not less than five years' standing. It was intended that the Supreme Court should henceforth be the final authority in India under the British Crown in judicial matters of all descriptions. One of the objects of the step was to bring the judiciary from the lowest to the highest under the control of the Supreme Court.

The Governor-General and Council had so long

formed the *Sadar Dewani Adalat*. Later, in place of this arrangement, the Chief Justice of the Supreme Court was appointed Judge of the Court and was vested with all its power. This step defeated one of the objects of the provisions of the Regulating Act, as the head of the judiciary was indirectly brought under the control of the Governor-General and Council.

The establishment of the Supreme Court had given rise to a conflict between it and the Supreme Council. A settlement was, however, reached by an Act of 1781, setting limits to the jurisdiction of the Supreme Court. By this measure, the Governor-General and Council of Bengal, jointly or severally, were exempted from the jurisdiction of the Supreme Court, "for anything, counselled, ordered, or done by them in their public capacity." The new Act gave authority to the Governor-General and Council to frame regulations for the Provincial Courts of justice without reference to the Supreme Court. The Act constituted the *Sadar Dewani Adalat* as a Court of Record. The same Act also recognised that the application of English law and legal procedure was not the proper way of administering justice in India. The judges were therefore asked to dispense justice in accordance with Hindu or Mahomedan law to which the parties might be subject.[4]

Important changes in the judicial structure were introduced during the administrations of Lord Cornwallis,[5]

[4] It should be noted that it was during this period that a parliamentary Committee presided over by Burke conducted an enquiry into the different aspects of the judicial system of India. The Committee suggested radical changes. (*Vide, ante* p. 19).

[5] Lord Cornwallis played an important part in the subsequent modelling of the judicial structure. One of his important acts

Lord Wellesley and Lord William Bentinck. Subsequently the assumption of Government by the Crown resulted in radical changes in the judicial system.

The Present Structure

Soon after the Queen's Proclamation, the Civil Procedure Code (1859), the Penal Code (1860) and the Criminal Procedure Code (1861) were enacted. This brought about a unification of the legal system in India. The passing of the Indian High Courts Act in 1861 constituted the next landmark in the history of administration of justice in British India. The Act empowered the Crown to establish by Letters Patent, High Courts at Calcutta, Madras and Bombay. The Letters Patent for the High Court in Bengal were issued in 1865. With the establishment of the High Court in Calcutta, the jurisdiction and powers of the Supreme Court, the *Sadar Dewani Adalat,* and the *Sadar Nizamat Adalat* were all merged in and transferred to it. Similar Letters Patent were issued for Bombay and Madras where also High Courts were esta-

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was the separation of civil and revenue jurisdictions in 1793. In a celebrated minute (1793) on the subject he said that the collectors of the revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the Courts of Judicature. Lord Cornwallis went so far as to add that the Collectors must collect the public dues subject to a personal prosecution for every exaction exceeding the amount which they were authorised to demand on behalf of the public and for every deviation from the regulation prescribed for the collection of it. The subsequent history of the Indian judicial system shows that persistent and successful efforts were often made by the executive to depart from the very sound and reasonable policy laid down by Lord Cornwallis in this important matter.

blished. In 1866 Letters Patent were issued establishing a High Court at Allahabad.[6]

In the Punjab a Chief Court was established in accordance with the terms of Act IV of 1866. The functions of the court were in most respects similar to those of the High Court. Whereas the High Courts were established under the direct authority of the British Parliament, Chief Courts and such other courts as Judicial Commissioner's Courts, etc., were constituted in other Provinces under the authority of the Government of India as then constituted. As a result of the establishment of High Courts and the passing of the Indian Councils Act, 1861, by the British Parliament, there was a general reorganisation of the judicial system throughout British India.

The Indian High Courts Act of 1911 introduced certain changes as the result of experience. Following this Act High Courts have subsequently been established at Patna, Lahore and Rangoon. Besides there is a Chief Court at Lucknow for Oudh. There are also three Judicial Commissioner's Courts, one at Nagpore for the Central Provinces, one for the North-Western Frontier Province, and a third for Sind. The Chief Courts and Judicial Commissioner's Courts enjoy almost the same powers and jurisdictions as the High Courts. Assam comes under the jurisdiction of the Calcutta High Court.[7]

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6 The part of the country over which the Allahabad High Court exercised jurisdiction was then known as the North-Western Provinces of the Bengal Presidency.

7 **Civil Courts**: The different grades of Civil Courts are enumerated below :

1. *High Courts:* Chartered High Courts have been established at Calcutta, Madras, Bombay, Allahabad, Patna, Lahore and Rangoon. There are besides Judicial Commissioner's Courts for the Central Provinces, the North West Frontier Province and Sind and a Chief Court at Lucknow for Oudh.

2. *District Courts or Courts of District Judges:* These are principal civil courts of original jurisdiction in the district. These are also courts of appeal from the decrees and orders of subordinate courts.

With the passing of the Indian High Courts Act, 1911, the minimum number of judges of a High Court that may be appointed, including the Chief Justice, has been raised from 16 to 20. The Judges are appointed by

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3. *Courts of Subordinate Judges* (in the Bombay Presidency subordinate Judges of the first class) : The jurisdiction of these courts extends to all original suits of any value.

4. *Courts of District Munsifs* (corresponding to courst of subordinate Judges of the second class in the Bomay Presidency) : The jurisdiction of the Second Class Subordinate Judges in the Bombay Presidency extends up to Rs. 5,000, that of the District Munsif in Madras, up to Rs. 3,000, and that of the Musifs in Bengal, Assam and the United Provinces, unless specially authorised, up to Rs. 1,000. In Calcutta, Bombay and Madras, there are Presidency Small Causes Courts. The jurisdiction of these courts extends up to Rs. 2,000. It is provided that High Courts have no jurisdiction over such Small Causes Court suits the value of which is less than Rs. 1000. In Presidency Small Causes Court suits, the value of which exceeds Rs. 1,000 but does not exceed Rs. 2,000, both the High Court and the Small Causes Court have jurisdiction to try them; the procedure laid down being that they should be instituted only in the Small Causes Court as being the court of the lowest grade. Below these, there are such courts, as village Munsifs' Courts in the Madras Presidency or Union Board Courts in some of the other Provinces.

Criminal Courts : The different grades of Criminal Courts subordinate to the High Court are as follows : 1. Courts of Sessions. 2. Courts of Presidency Magistrates. 3. Courts of Magistrates of the First Class. 4. Courts of Magistrates of the Second Class. 5. Courts of Magistrates of the Third Class. The Courts of Sessions Judge, Additional Sessions Judge, and Assistant Sessions Judge are included in the term "Courts of Sessions". A sessions division generally consists of a district or of districts, as determined by the Provincial Government. Every Presidency town is deemed to be a district and the Provincial Government may divide any district, outside the Presidency town, into sub-divisions. In every district outside the Presidency towns, the Provincial Government appoints a magistrate of the First Class as the district magistrate, and may place any magistrate of the first or second class in charge of a subdivision, who is called a subdivisional magistrate. The Provincial Government may appoint as many persons as it thinks fit, besides the district magistrate, to be magistrates of the first, second, or third class, in any district outside the presidency towns. Some of these magistrates may be honorary magistrates. The Provincial Government may direct any two or more such magistrates in any place

His Majesty and hold office during his pleasure. The Governor-General in Council may appoint Additional Judges for periods not exceeding two years. While the Governor-General in Council is the executive authority exercising control over the Calcutta High Court, all other High Courts are under the administrative control of the Governor in Council of each province, except as regards the appointment of additional judges and the fixing of the local limits of their jurisdiction.

It is provided that not less than one-third of the judges of a high court, including the Chief Justice, but excluding additional judges, must be barristers of England or Ireland or members of the Faculty of Advocates in Scotland, of not less than five years' standing, and not less than one-third, members of the Indian Civil Service of not less than ten years' standing and having for at least three years served as, or exercised the powers of, a district judge. A person having been a pleader of a High Court for a period of not less than ten years as also a person having held judicial office, not inferior to that of a subordinate judge or a judge of a small cause court, for a period of not less than five years is eligible for appointment as judge of a high court. In temporary vacancies in the office of Chief Justice persons eligible for appointment as judges, other than barristers of the English or the Irish bar or members of the Faculty of Advocates in Scotland, may be appointed.

With reference to the law to be administered by the high courts at Calcutta, Madras and Bombay, in the exercise of their original jurisdiction in suits against inhabitants of Calcutta, Madras, or Bombay, as the case may be, it is specifically laid down that in matters of inheritance and succession to lands, rents and

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outside the Presidency towns to sit together as a bench. The Provincial Government appoints from time to time a sufficient number of persons as Presidency Magistrates for each of the Presidency towns, one of them being the Chief Presidency Magistrate. Besides the Chief Presidency Magistrate other salaried or non-salaried (honorary) Presidency Magistrates may be appointed.

goods and in matters of contract and dealing between party and party, they shall, when both parties are subject to the same personal law or custom, having the force of law, decide according to that personal law or custom; and when the parties are subject to different personal laws or customs, having the force of law, decide according to the law or custom to which the defendant is subject.

The high courts are all courts of record and have jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas. Such jurisdiction along with the nature and extent of their powers and authority over or in relation to the administration of justice including their powers of superintendence with respect to subordinate courts is defined in the letters patent establishing such high courts, which may be amended from time to time by His Majesty by further letters patent. It is provided that the high courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

The Governor-General, the Governors, the Lieutenant Governors, the Chief Commissioners, the members of the Central and Provincial executive councils as also ministers are exempted from the original jurisdiction of High Courts for any action done in their public capacity except in respect of treason or felony. They are not liable to arrest or imprisonment in any suit or proceeding in any High Court acting in the exercise of its original jurisdiction. Such exemption from liability to arrest and imprisonment applies also to the Chief Justice and other Judges of High Courts. It is further provided that a written order by the Governor-General in Council shall be taken to be a justification for any act in any Court in India except so far as the order extends to any European British subject. Proceedings may, however, be taken before any competent court in England in respect of any such act by the

Governor-General, or any member of his Executive Council, or any person acting under their orders.*

Appeals to the Privy Council

A notable feature of the British Indian judicial system almost from its very earliest stages has been the provision for the right of appeal to the King-in-Council, which means the Privy Council in England, from the judgments of Courts in India.

This right was first granted in 1726 by the Royal Charter of that year establishing Mayor's Courts. A second appeal from the Governor-in-Council lay to the Privy Council in cases in which the disputed amount was above Rs. 4,000. Similar appeals were allowed from the decisions of Supreme Courts, with this difference that in the case of the Supreme Court at Bombay the value of the suit was to be above Rs. 3,000. The right of appeal from the decision of the *Sadar Dewani Adalat* was also given, appeals being limited to cases in which the judgment exclusive of costs of suit was of the value of Rs. 50,000 or more. In criminal cases the right of appeal to the Privy Council was of a very limited nature. The power of granting or refusing an appeal in such cases lay with the court below.

With a view to regulating appeals from the British Indian Courts, Colonial Courts, etc., and to putting them on a proper system, an Act was passed by the British Parliament constituting the Judicial Committee of the Privy Council in 1833, followed by a series of Acts. The Privy Council for judicial purposes consists at present of the Lord Chancellor and Ex-Lords Chancellor ; the Lord President of Council and ex-Lords President ; pre-

* Keith has pointed out that in the case of the Dominions "even a Governor-General is liable in the courts of the territory both civilly and criminally for any acts done in his private or his public capacity if these acts are illegal."—*Constitutional Law of British Dominions*, p. 142.

sent and past members of the Supreme Court in England and the seven Lords of Appeal in Ordinary if Privy Councillors, besides any judge or ex-Judge of a superior Court in the Dominions, States or Provinces, provided he is a Privy Councillor. The number of the last class has reached ten. For Indian appeals two judges are provided by the Appellate Jurisdiction Act, 1929.

Subject to such rules as may be made from time to time, by His Majesty-in-Council, regarding appeals from Courts in British India, an appeal in civil cases lies to His Majesty in Council (*a*) from any decree or final order passed on appeal by a High Court or by any other Court of final appellate jurisdiction ; (*b*) from any decree or final order passed by a High Court in the exercise of original civil jurisdiction ; and (*c*) from any decree or order, when the case is certified to be a fit one for appeal to His Majesty in Council, provided the value of the subject matter in dispute shall amount to Rs. 10,000 or upwards.

There is no right of appeal to His Majesty in Council in a criminal case. Special leave to appeal may, however, be granted in exceptional cases. As Lord Watson said : "The rule has been repeatedly laid down and has been invariably followed that His Majesty will not review or interfere with the course of criminal proceedings unless it is shown that by a disregard of the form of legal process or by some violation of the principles of natural justice or otherwise substantial and grave injustice has been done".[8]

The appointment of Privy Councillors rests with the Crown, on the recommendation of the British Government. Members of

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8 H. T. Prinsep—*Criminal Procedure Code* (1933), p. 640

the Judicial Committee of the Privy Council hold office for the life of the royal person appointing them and for six months subsequent to his or her decease and are subject to dismissal by the Crown and to impeachment by Parliament.

Provisions Relating to European British Subjects

In civil cases no distinction of race has been recognised since 1836. In criminal cases however, until 1872, European British subjects could only be tried or punished by the High Courts. Subsequently it was enacted that they were to be tried by British magistrates of the highest class, who were also Justices of the Peace and British judges of sessions courts. During Lord Ripon's Viceroyalty (1880-84) an attempt was made to remove these racial discriminations. A Bill called the Ilbert Bill, after the name of the then Law Member, was drawn up to give effect to this object. It, however, gave rise to a furious agitation on the part of the British community in India. The Government of India made a compromise. The result was that the law was so amended that every British subject brought up for trial before a district magistrate, a presidency magistrate or a sessions judge had the right, however trivial might be the charge, to claim to be tried by a jury of which not less than half the number were to be Europeans or Americans. They were not to be tried by a second or third class magistrate. They could, however, be tried by a first class magistrate if he was a Justice of the Peace and himself a European British subject. It was further laid down that "no judge presiding in a Court of Session, except the Sessions Judge, shall exercise jurisdiction over an European British subject, unless he is himself an European British subject; and if he is an Assistant Sessions Judge unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government." The measures adopted by the Government of India amounted to a virtual abandonment of their original proposals.

Subsequently, as a result of the recommendation made by a Committee appointed by the Government of India in 1921, measures were adopted in 1923 providing for the removal of certain discriminations existing between European British subjects and Indians in criminal trials and proceedings. This was accom-

plished in two ways. First, certain privileges enjoyed by European British subjects in cases of trial were abolished; and secondly certain privileges were modified and conferred on Indians also. European British subjects, however, still enjoy the privilege of not being tried by magistrates of the second or third class, save for offences punishable only with fine not exceeding fifty rupees. In case of a few areas, such as the North-West Frontier Province, in which the general judicial administration is not properly developed, European British subjects are allowed the privilege of being under a different High Court. They further possess the privilege of being able to obtain writs in the nature of *Habeas Corpus* from High Courts of Judicature, established by Letters Patent, when outside the limits of British India. Further, European British subjects are exempted from the jurisdiction of magistrates and Sessions Judges as regards sentence of whipping, and from the jurisdiction of magistrates, specially empowered under section 30 as regards the infliction of sentences of imprisonment exceeding two years.

Other Europeans and Americans also enjoy certain special rights and privileges, e.g., trial by jury or assessors, composed of as many persons, Europeans or Americans, as may be required by provisions laid down in the Criminal Procedure Code.

Combination of Executive and Judicial Functions

A serious defect of the present system of judicial administration in India is the combination of executive and judicial functions in the same hands.* The magistrate of a district, for instance, is the head of the police in the area under his charge ; and it is under his direction that the criminal offender is caught, prosecuted and tried. That this is not a correct method of dispensing justice was recognised by many British administrators

* Raja Rammohun Roy, on the occasion of the renewal of the Charter of the East India Company, suggested as early as in 1831, the separation of Executive and Judicial functions, the codification of the Civil and Criminal Law, the introduction of trial by jury, etc.

even in the very early days of British rule in India. The question formed one of the principal planks in the platform of the Indian National Congress in its earlier days. At a subsequent stage, Mr. Manomohan Ghosh, a distinguished member of the Calcutta Bar, who commanded extensive criminal practice, took very great pains to demonstrate the obvious evils of the system in practice as well as in principle.

The demand for a separation of judicial and executive functions gave rise to a heated controversy resulting in the presentation of an influential memorial to the Secretary of State for India in 1899 urging a reform of the system. The memorial summarised the arguments in favour of separation of judicial and executive functions in the following words:

> "(*i*) that the combination of judicial with executive duties in the same officer violates the first principles of equity;
>
> (*ii*) that while a judicial officer ought to be thoroughly impartial and approach the consideration of any case without previous knowledge of the facts, an executive officer does not adequately discharge his duties unless his ears are open to all reports and information which he can in any degree employ for the benefit of his district;
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> (*iii*) that executive officers in India, being responsible for a large amount of miscellaneous business, have not time satisfactorily to dispose of judicial work in addition;
>
> (*iv*) that, being keenly interested in carrying out particular measures, they are apt to be brought more or less into conflict with individuals, and, therefore, that it is inexpedient that they should also be invested with judicial powers;
>
> (*v*) that under the existing system collector-magistrates do in fact neglect judicial for executive work;

(*vi*) that appeals from revenue assessments are apt to be futile when they are heard by revenue officers;

(*vii*) that great inconvenience, expense, and suffering are imposed upon suitors required to follow the camp of a judicial officer who in the discharge of executive duties, is making a tour of his district; and

(*viii*) that the existing system not only involves all whom it concerns in hardship and inconvenience, but also, by associating the judicial tribunal with the work of the police and of detectives, and by diminishing the safeguards afforded by the rules of evidence, produces actual miscarriage of justice, and creates, although justice be done, opportunities of suspicion, distrust, and discontent which are greatly to be deplored.

There is, too, a further argument that the separation, which arises out of the very nature of the work incidental to the judicial office, and which of itself might well be regarded as conclusive in the matter."

The memorial urged that it was "essential to the proper and efficient, and we might add impartial, administration of justice that the judicial officer should be an expert especially educated and trained for the work of the court."[9]

The argument raised by some of the opponents of the proposed reform that this would entail a heavy cost has been met in an effective manner more than once. The late Mr. R. C. Dutt in a scheme, that he published in 1893, showed that it was possible to bring about the reform

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9 The memorial was signed by Lord Hobhouse, Legal Member of the Viceroy's Executive Council (1872-77), the Rt Hon Sir Richard Couch, late Chief Justice, Calcutta High Court, Sir Richard Garth, late Chief Justice, Calcutta High Court, Sir Charles Sargent, late Chief Justice, Bombay High Court, Sir J. B. Phear, late Chief Justice of Ceylon, Sir William Wedderburn, Herbert J. Reynolds, late Member, Board of Revenue, Bengal, Sir Roland Wilson, Sir William Markby, late Judge, Calcutta High Court, Sir Raymond West, late Judge, Bombay High Court and J. Scott.

without any material addition to the public expenditure. Mr. Dutt's scheme referred specially to Bengal, and he showed that separation could be effected by a simple re-arrangement of the existing staff, without any additional expenditure.

Sir Abdur Rahim in his famous minute of Dissent to the Report on the Royal Commission on the Public Services in India (1915) urged a complete separation of the judicial and executive functions. He had no hesitation in stating his belief that the prestige of the Government in all the advanced provinces had distinctly suffered in the public estimation by keeping up a system by which its administration of criminal justice was subject to suspicion.

Sir Abdur Rahim made a strong case in favour of the reform. "The principal points in the complaint", Sir Abdur said, "refer to the office of the district magistrate and collector which is a 'strange union of the functions of constable and magistrate, public prosecutor and criminal judge, revenue collector and appeal court in revenue cases'. It is this officer who has the entire administrative control of the subordinate magistrates who are also employed under him in the discharge of revenue and general executive duties. What has been asked for is that magistrates should form a separate class of officers from the executive and revenue officers. Their duties are different and often clash with each other; their training and the administrative arrangements for their employment must be separate and suitable to each class of work. Magistrates should not be liable to be employed in revenue and executive work, nor should revenue and executive officers be employed in magisterial work. The officer responsible for the peace of the district and for its general executive and revenue administration should have no authority and control over the magistrates."

Sir Abdur Rahim quoted in his support the view of Sir Harvey Adamson. As Home Member of the Government of India, Sir Harvey in his speech on the budget delivered in 1908

said that "the inevitable result of the present system is that criminal trials affecting the general peace of the district are not always conducted in the atmosphere of cool impartiality which should pervade a court of justice. Nor does this completely define the evil, which lies, not so much in what is done, as in what may be suspected to be done; for it is not enough that the administration of justice should be pure; it can never be the bedrock of our rule unless it is also above suspicion." He added: "The exercise of control over the subordinate magistrates by whom the great bulk of criminal cases are tried is the point where the present system is defective . . . . But if the control is exercised by the officer who is responsible for the peace of the district there is the constant danger that the subordinate magistracy may be unconsciously guided by other than purely judicial considerations."

The matter has from time to time engaged the attention of the British Parliament, the Indian Legislature and the Provincial Councils during the last forty years. Since the inauguration of the Montagu-Chelmsford reforms, the demand for separation has been repeatedly made resulting in the appointment of Committees and the setting up of enquiries. But nothing has so far come out of these. Although the justice of the demand for separation of judicial and executive functions has been proved beyond doubt the authorities have not found it possible to remove this serious blot on the system of judicial administration in India.

The essential conditions of a sound system of administration of justice are that the judiciary should possess the intellectual and moral equipment needed for a proper discharge of its function and be able to perform such function without any fear or expectation of favour. But it is not enough that the judges are able, independent and above corruption. They should enjoy the fullest confidence of the people. Further, the cost of

judicial administration should be modest and the judicial procedure such as to avoid all complexity and delay in decision. The judicial system should not only conform to the genius and spirit of the people but be progressive, humane, and adaptable to changing circumstances. The judicial authority of a state above all should be such as to serve as an effective check against any arbitrary exercise of power, or any invasion of the liberties of the individual by the executive. When all these conditions exist it is then only that the judge can be expected to dispense evenhanded justice. Our description of the judicial system as existing at the present moment shows that in the nature of things it cannot but fail to satisfy these conditions, though it cannot be denied that it has been an improvement on the system it has replaced. There is no greater bulwork to a government than an able, honest and independent judiciary. As the great Hindu lawgiver Manu says: "Justice being destroyed will destroy, being preserved will preserve".

CHAPTER NINE

THE PUBLIC SERVICES

The duties performed by the government in India are of a very extensive nature. As the vast majority of the people were both ignorant and poor, the government had to take up many tasks, which might, otherwise have been left to local and private effort.[1] This is a situation which has perforce to continue until the void consequent upon the decay of village communities is filled by the development of new popular institutions.

India, consequently, has an enormous host of officers, the topmost of whom are very highly paid. The immense chain of state-services is more or less co-ordinated and organised. Hence the common description of the Government of India as a 'bureaucracy'.

The Charter Act of 1833 recognised the principle of admitting Indians to the services of the Crown. It was, however, in the Charter Act of 1853, that the principle of throwing open the Civil Service of the East India Company to general competition in England was accepted. But till 1870 only one Indian had successfully competed for and been enrolled in the Service. In 1870, an Act permitting "suitable" Indians to be employed in the Civil Service, without passing through the course in the regular prescribed manner was passed. This step resulted in only a few appointments of what were known as 'statutory' Indian Civilians,

1 The *Simon Report* observes : "The task of bringing within reach of such a society the benefits of the administrative experience and the applied science of the West was possible for one agency only—Government; no other had the necessary knowledge or machinery."

and a Commission (1887), with Sir Charles Aitchison as chairman, was appointed to enquire into the question of the appointment of Indians to the higher services. In accordance with the recommendation of this Commission, a threefold division of the services of India was effected. The divisions were the All-India or Imperial Service, the Provincial Service and the Subordinate Service. This division made it possible for the appointment of Indians to responsible positions, where they could train themselves up for higher posts in the Services.

The agitation for the Indianization of the Services is older than the Indian National Congress. Repeated demands for the increase of Indian personnel in the superior Public Services resulted in the appointment of another Commission, over which Lord Islington presided (1912). The Islington Commission's recommendations, however, could not be given effect to owing to the declaration of war in 1914.

The Montagu Declaration announced the increasing association of Indians in every branch of administration. The Report on Indian Constitutional Reform expressed the opinion that in conformity with the new policy of reform the recruitment of a larger proportion of Indians should be begun at once. This gave rise to misgivings in the minds of the British element in the Services.

The Imperial Services

The Imperial Services are the Indian Civil Service, the Indian Police Service, the Indian Forest Service, the Indian Medical Service, etc. Appointed by the Secretary of State for India, the members of these services are liable to transfer anywhere in India though they normally pass their career in the province to which they are first assigned. Members of Provincial and Subordinate Services serve in the respective provinces to which they

belong. The close gradation of officers, the limitation of their powers, and the frequent necessity of referring to higher authorities have combined to make the administrative machinery closely inter-linked and inter-dependent.[2]

The Act of 1919 includes 8 sections dealing with the services. A schedule to the Act mentions the officers reserved to the Indian Civil Service.[3] This list does not include, for instance, the Secretary, Joint-Secretary and Deputy-Secretary in the Army, Marine, Public Works, Education, Foreign and Political Departments and the Secretary and Deputy Secretary in the Legislative Department of the Government of India. These posts may be thrown open to non-civilians.

As there was a fall in the number of British recruits to the Indian Civil Service after the war, a committee with Lord MacDonnell as Chairman was appointed to enquire into the causes and to suggest remedies. Not satisfied with this, the alarmist sections in Britain succeeded in securing the appointment of a Royal Commission on the Superior Civil Services in India, with Lord Lee as Chairman (1923) to consider the question of the Services in the light of the altered circumstances of the Reforms. The cost of the Commission was refused by

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2 In the course of a speech in 1922, Mr. Lloyd George described the Indian Civil Service as the steel frame of the Indian government. He further said: "Whatever we may do in the way of strengthening the Government of India, one institution we will not interfere with, we will not deprive it of its functions and privileges, and that is the British Civil Service in India".

The Indian Civil Service is the oldest Civil Service in existence. To members of this Service are open the largest number of posts of position and honour in the executive as well as in the judicial sphere. The civil servant in India, unlike his compeer in England, formulates policies in the Legislative and Executive Councils. The Montagu Report describes him to be more a member of a Government corporation than of a purely Civil Service.

3 Vide Parts VII A (The Civil Services in India) and VIII (The Indian Civil Service), also Schedule 3 to the Act.

the Assembly and was certified by the Viceroy. The report of the Committee was published in 1924. One of their recommendations was that new entrants to the Education, Agricultural, and Veterinary Services and the Indian Service of Engineers in the Roads and Buildings Branch should be recruited by Local Governments on a provincial basis. The object was to place them under the control of the ministers. The Indian Medical Service, though falling within the transferred field, was to continue as an all-India Service.

In regard to Indianisation, the Lee Commission reported, that in the I.C.S. 20 per cent. of the superior posts should be filled by the appointment of provincial service officers, and that direct recruits in the future should be Indian and European in equal numbers. This was expected to bring about an equality of numbers in the I.C.S. by 1939 In the Indian Police Service direct recruitment was to be in proportion of five Europeans to three Indians producing an equality of Indian and European personnel by 1949. Similar suggestions were also made for the Indian Forest Service (in provinces in which "Forests" are reserved) and the Irrigation Branch of the Indian Service of Engineers with a view to increase the Indian personnel.

The Lee Commission recommended the immediate establishment of the Public Service Commission contemplated by the Government of India Act 1919, with five Commissioners. The Commission further proposed several specially attractive terms regarding proportionate pensions, special concessions and overseas allowances, and the conditions of service for the British element in the Services. "Its proposals for the removal of service grievances", states the Simon Report, "were generally accepted as adequate".

The Lee Report met with a hostile reception in the Assembly (September, 1924) when Pandit Motilal Nehru's amendment to the official motion regarding the Report was passed by a large majority. The amendment, after reciting the dissatisfaction of the Assembly with the genesis

and operation of the Lee Commission, put forward the view that the House was unable on the materials before it to satisfy itself on the propriety and reasonableness of the recommendations. Pandit Motilal Nehru maintained, in particular, that the present constitution of the Indian Services was an anachronism ; and that the Government was attempting the impossible task of working a reformed constitution with an unreformed administrative cadre. He asserted that it rested with the Legislature to define the powers of permanent officials, to lay down the conditions of their recruitment, and to indicate the policy which they must execute.

The minority report of the Reforms Enquiry Committee explained the anomaly of the position of the Services under the Reforms. The minority held that the present system of recruitment and control of the Services was incompatible with the situation created by the Reforms and with the possibility of the further development of the principle of responsibility.

As Lord Morley observed: The Indian administration "would be a great deal more popular if it were a trifle less efficient and a trifle more elastic. Our danger is the creation of a pure bureaucracy, competent, honourable, faithful, industrious, but rather mechanical, rather lifeless, perhaps rather soulless". The spirit of self-help and self-reliance in a people is in fact crushed and national development is stunted by the system. This is the moral evil of the dominance of a foreign bureaucracy, however benevolent it might be.

CHAPTER TEN

THE DISTRICT ADMINISTRATION

In India partly due to historical reasons and partly to dissimilarity in local conditions the administrative arrangements differ from province to province. A province is generally divided into Divisions, in charge of Commissioners.[1] In some of the provinces, there is a Board of Revenue which is the chief revenue authority of the province and also forms an appellate court in rent cases. In every province the district is, however, the unit of administration. The size of the district is 4½ thousand square miles on an average. Some of the bigger districts have a population exceeding that of such states as Switzerland or Denmark.

To the average inhabitant of a district the District Officer known in some provinces as the Collector and in others as the Deputy Commissioner is "the Government". A district is subdivided into a number of subdivisions, talukas or tahsils.

Each district has, besides, its body of district heads of departments including the Civil Surgeon, the Superintendent of Police, the District and Sessions Judge, and the

1 In Madras there are no Commissioners of Divisions, while there is no Board of Revenue in Bombay, the Punjab, C. P., Assam, and Burma. In Bengal, Bihar and Orissa, and the United Provinces there are to be found both the Board of Revenue and the Commissioners of Divisions. There has been an agitation in these provinces, particularly in Bengal, for some time, for the abolition of the posts of Commissioners of Divisions.

district Inspector of Schools.[2] But in all action taken by them beyond mere routine work the Collector has to be informed. The Montagu Report described the duties of a Collector in the following words:

"The district officer has a dual capacity; as the Collector he is head of the revenue organisation, and as Magistrate he exercises general supervision over the inferior courts and, in particular, directs the police work. In areas where there is no permanent revenue settlement, he can at any time be in touch through his revenue subordinates with every inch of his territory. This organisation, in the first place, serves its peculiar purpose of collecting the revenue and of keeping the peace. But because, it is so closely knit, so well-established and so thoroughly well-understood by the people, it simultaneously discharges easily and efficiently an immense number of other duties. It deals with the registration, alteration, and partition of holdings, the settlement of disputes, the management of indebted estates; loans to agriculturists, and above all, famine relief. Because it controls revenue, which depends on agriculture, the supreme interest of the people, it naturally serves also as the general administrative staff . . Several other specialised services exist with staffs of their own . . . . but in varying degrees the district officer influences the policy in all these matters, and he is always there in the background to lend his support, or if need be, to mediate between a specialised service and the people."[3]

The Collector's influence and authority extend over the local self-governing bodies. It has been observed that inspite of the transfer of Municipalities, District Boards, Local Boards and Union Boards from his direct control, "he is still intimately concerned with the effects of the policy and individual acts of self-governing bodies upon the people of the district. Even now, in some cases the Collector presides over the District Board and he has been

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2 This list is neither exhaustive nor applicable to all provinces. It should be regarded as merely illustrative.

3 *Montagu-Chelmsford Report*, para 123.

given the power of interfering in the administration of local self-governing bodies, in numerous direct and indirect ways, as "on every one of the innumerable matters which may require the orders, assistance, advice or interference of Government, it is to the District Officer that the non-official president or member of a local body, the Commissioner or Minister, as well as the ordinary citizen, will naturally look."[4]

Ordinarily, all appointments to honorary-magistrateship and nominations to membership of all local self-governing bodies are made on his recommendation. Indian titles, honours and other rewards are usually given upon his suggestion. As he is responsible for a number of local appointments, including those of village headmen, he wields large powers of patronage. A combination of the revenue and magisterial functions, together with the union of executive and judicial powers in a single person, invests the District Officer with an unusually magnified dignity as compared with civil servants of other countries.

Furthermore, the Collector is the agency through whom the work of the transferred departments has to be given effect to. The anomaly of the situation was foreseen by the authors of the Montagu Report. They looked forward to the day when the District Officer will rapidly pass from being an administrator into an adviser and helper to Indians in the management of their own affairs. In actual practice, nothing in this direction appears to have been attempted. The Simon Report in taking stock of the effect of the reforms on the Services notes that because of the limited success of the reforms

4 *Simon Report*, Vol. I, Part IV, Chapter 2.

and the strain on the Services due to political agitation, it has been a "continuance and enhancement of their previous exertions rather than a substitution of advice and consultation for action and decision that have been demanded". It also states that "though individual non-officials who have undertaken public duties may have sought to emphasize their independence of official control, many have shown a greater deference to official advice than their position actually imposed upon them". This is not very surprising if we remember the autocratic powers inhering in the district officer. Nothing could be more incongruous than the design of a popular legislature and executive matched with an administrative system of an absolute character.

CHAPTER ELEVEN

THE DEFENCE OF INDIA

The Viceroy's Executive Council exercises in respect of the Army administration the same authority as it does over other departments. But all the work connected with the Army, the formulation and execution of military policy and the supreme direction of any military operations in India are centred in one authority—the Commander-in-Chief. He is in close touch with the War Office in Great Britain. The Army Department is administered by a Secretary who, like other secretaries in the civil departments, has the constitutional right of access to the Viceroy. The Army Secretary represents the Army administration in the Legislative Assembly.

The Commander-in-Chief is by custom the Army Member of the Viceroy's Executive Council. He adminsters not only the Army but also the Royal Indian Marine and the Royal Air Force in India. There is a Military Council for advisory purposes. It consists of the Commander-in-Chief, as President, with the Quartermaster-General, the Master-General of Ordnance, the Secretary to the Government of India in the Army Department and the Financial Adviser, Military Finance.

In 1932, there were 6590 officers with King's Commissions; 58,403 British other ranks; 4,499 Indian officers with the Viceroy's Commission; 1,45,017 Indian other ranks; 36,597 followers and 44,541 Indian reservists. Since the War, there has been a gradual process of mechanization compatible with the physical features of

the country, maintenance of effective air troops and reorganization in the cavalry, infantry and the supply services.

The British cavalry and infantry units of the Indian Army are not located permanently in India; they are units of the British Army sent for foreign service, the major portion of which is spent in India. This portion of the Army has been described by some as an "army of occupation". In India, at present, there are 5 cavalry regiments each of 27 Officers and 571 other ranks and 45 infantry battalions. Each battalion consists of 28 officers and 865 other ranks. The number of Indian cavalry regiments is 21 and of infantry and pioneer battalions 134. Besides these in the Engineering, Marine, Air Force, Royal Tank Corps, and other allied sections of the Army there are a large number of British Officers and men.

In addition to the Regular Army, there is the Voluntary Auxiliary Force, 33,000 strong, whose membership is limited to European British subjects, and the Indian Territorial Force started in 1923 to which Indians are eligible.

The Indian States Forces, maintained by the rulers of the Indian States, contain about half a lakh men of all arms. The States troops have been available to the British Government during emergencies.

Functions of the Army

The duties of the Army in India are said to be two-fold: to protect India from foreign aggression and to secure internal order, the former of which is largely an Imperial concern. Moreover, on many an occasion India supplied contingents for operations outside India for Imperial purposes,[1] the cost of which was later re-imbursed

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[1] As Lord Curzon once observed: "The Indian Army in fact has always possessed . . . . a triple function; the preservation of internal peace in India itself; the defence of the Indian frontiers; and preparedness to embark at a moment's notice for imperial service in other parts of the globe. In this third aspect India has for long been one of the most important units in the scheme of British Imperial defence, providing the British Government with a striking force always ready, of admirable efficiency and assured valour."

by the Imperial Government. Her total contribution during the war was 13 lakhs and odd men, 173 thousand animals and 37 lakh tons of supplies and ordnance stores.

For purposes of military administration, India is divided into four commands, each under a General Officer Commanding in-Chief. Burma is an independent District under a Commander. The troops are allotted to commands and districts on the principle that the striking force must be ready to function in war, commanded and constituted as it is during peace time. There are thus 3 categories of troops; viz., (1) Covering troops, to deal with major operations, to form a screen behind which mobilisation can proceed undisturbed; (2) the Field Army which is India's striking force in a major war; and (3) Internal Security troops, maintained at a proportion sufficient to cope with internal disturbances even during a major war.

After the War, in 1919 a Committee on the Army in India was appointed to report on the administration and organisation of the Army including its relation with the British War Office and the India Office, and also to consider the position of the Commander-in-Chief in his dual capacity as head of the Army and member of the Viceroy's Executive Council. The report of the Esher Committee, as it is popularly known, evoked widespread protest as it contemplated larger army expenditure and was based on the principle that the question of the Army in India must be considered in relation to the general defence of the Empire. So strong were the criticisms that the Government appointed a Committee of the Imperial Legislature, to consider the Report of the Esher Committee. This Committee not only protested against the Esher Committee's main arguments, but they also demanded a rapid process of Indianization of tht Army. As a step towards this, they recommended a 25 per cent grant of the King's Commissions every year to Indians.

Problem of Indianisation

In 1918 Indians had been declared to be eligible to hold the King's Commission and this was followed by the reservation of a few vacancies at the British Royal Military College at Sandhurst, and also at Woolwich and Cranwell, for Indian candidates. A move towards Indianisation was taken in 1922, when the Dehra Dun College was opened by the Prince of Wales, for the preparatory training of Indian aspirants to a King's Commission, through the Royal Military College, at a moderate cost.

A further step in this direction was taken by the announcement of the "eight units scheme" by Lord Rawlinson, Commander-in-Chief of India, in 1923. Designed to test the practicability of successful Indianisation of the Army, the scheme provided for five infantry battalions (out of 104), two cavalry regiments (out of 21) and a pioneer unit (out of 7) to be placed in charge of Indian officers only, in due course. But this process can not be completed until 1946, when Indian officers would attain the seniority to displace the British officers at the top of these eight units.

As the 'eight units scheme' was regarded as extremely inadequate and was criticised as implying racial segregation, the Indian Sandhurst Committee was appointed in 1925, with Sir Andrew Skeen, Chief of the Staff of the Army in India as President. The Committee included ten Indians. The Skeen Committee unanimously recommended an initial doubling of the vacancies allotted to Indians at Sandhurst, the establishment of a Military College on the lines of Sandhurst in India and the abandonment of the 'eight units scheme'. Fifteen months after the publication of the Report, the Government

announced their decision on the recommendations. The 'eight units scheme' was to continue, the proposal of an Indian Sandhurst was definitely rejected but the recommendation for increasing vacancies for Indians in England was adopted.

Recently, however, in accordance with the recommendation of the Defence Sub-Committee of the First session of the Round Table Conference a Committee of experts known as the Indian Military College Committee was appointed in 1931. It was composed of 6 officials, 8 non-officials and 3 members from the States, with Sir Philip Chetwode, Commander-in-Chief as Chairman. The majority of the Committee recommended the training of 60 Indians for officership in the army at Dehra Dun. By 1935 the first group of these will be eligible for King's Commission.[2] The minority, especially Dr. Moonje, Sir Sivaswamy Aiyer and General Rajwade in their minutes, said that this step could hardly have any appreciable result, as the lowest figure of officers in the Indian Army with the King's Commission was 3,200. Further, they pointed out that only one-third of the Indian Army consisting of 4 divisions of Field Army, 2 divisions of Covering and Internal Security troops and 6 Cavalry Brigades would in the course of more than 20 years be Indianized. This was in contravention of the dictum laid down by the Defence Sub-Committee of the R.T.C. that "the defence of India must to an increasing extent be the

2 The college, called the Indian Military Academy, Dehra Dun, was opened in October, 1932. It is contemplated that the intake of candidates will be 40 every half year. Of this number, twelve will be selected by a competitive examination conducted by the Public Service Commission; three will be nominated by His Excellency the Commander-in-Chief from among candidates who qualify at the competitive examination; fifteen will be selected from serving soldiers of the Indian Army (including Auxiliary and Territorial Forces) who fulfil certain requirements as regards age, rank and educational qualifications; and ten will be taken from Indian States Force.

With the establishment of the Indian Military Academy, however, Indians will no longer be trained at Sandhurst and Woolwich. (*India in 1932*, p. 81).

concern of the Indian people, and not of the British Government alone".

Thus, at present, King's Commissions can be obtained by Indians in three ways, *viz.*, by qualifying as a cadet through Sandhurst or Woolwich in England or through Dehra Dun, by the training of specially qualified officers of Indian regiments at the Royal Military College or at Dehra Dun, and by the bestowal of honorary Commissions on distinguished Indian officers, whose age and lack of education preclude the grant of full Commissions.

Some progress in the direction of the formation of an Indian Air Force has been made by sending ten cadets for training as commissioned officers at the Royal Air Force College, Cranwell.

In the Royal Indian Marine, examinations for the selection of candidates for training in the Indian Mercantile Marine Training Ship "Dufferin", and for entry to the commissioned ranks of the service are being held. The Indian Mercantile Marine Committee (1923), however, recommended the adoption of more comprehensive measures towards the building up of an Indian Navy.

Another problem of Army organisation worthy of note relates to the recruitment of the Army. A theory regarding the "Martial races" of India has been advanced as an explanation of the present non-national character of the Army.[3] It has, however, been found from actual facts that the so-called non-martial races and castes have been excluded from the Army, from considerations of policy. It is essential that all the provinces, communities, classes and castes of India should be allowed equal rights and opportunities to enlist in the Army in order to make it "national".

3 This theory recently re-iterated in the Simon Report, has been ably refuted by Mr. Nirad C. Chaudhuri in a series of articles in the *Modern Review* (1930-31).

Army Control and Expenditure

Indian public men have demanded for many years past not only the development of an Indian Army organised upon a purely Indian bias and officered by Indians, but also the administration of the army by a responsible minister. Further, the expenditure on the Army and the Air Forces in India just before the war amounted to Rs. 29 crores. This rose to 66 crores in 1922-23. Since then acting on the recommendation of the Inchcape Committee, the expenditure has been brought down to below 50 crores.[5] That this expenditure can be and should be cut down drastically has been repeatedly demanded by Indian public men. The enormity of the cost may be realised from the fact that the defence expenditure alone accounts for more than half of the Central Government's expenditure.

Recently a Capitation Tribunal enquired into an allied problem, *viz.*, the military expenditure in dispute between the Government of India on the one hand, and the British War Office and the Air Ministry on the other. The enquiry related mainly

4 Vide, *Nehru Report*, p. 12-14; and the *Simon Report*, Vol. I, Part I, Ch. 10.

5 Since 1928, the Government of India, according to the proposal of the Commander-in-Chief, have been paying a lump sum to the latter, who is responsible for its expenditure in the best interests of the Army. This is known as the 'Army Contract System'. The total amount allotted in the budget for the Army, 1932-33, was Rs. 46·9 crores, of which Rs. 35·9 crores was to be spent in India and the rest in England.

6 The Tribunal was an advisory one. It was composed of Sir Robert Garran (lately Solicitor-General in the Commonwealth of Australia) as Chairman, Sir Shadi Lal of the Punjab High Court and Sir Mahomed Sulaiman of the Allahabad High Court (nominees of the Government of India), and Lord Dunedin and Lord Tomlin (nominees of the British Government), as members.

The Capitation payments began after the Mutiny when the troops of the East India Company were amalgamated with those of the Crown. The rate then fixed was only £10 per soldier sent to India; in 1920 this rate stood at £28·5.

to : (1) the amount of India's contribution towards the recruiting and training expenses in England of the British troops and airmen who serve for a part of their time in India; and (2) India's counter-claim to a contribution towards the cost of her defence expenditure. The Committee reported in January 1933 and the Government announced on December, 20, 1933, that in accordance with the recommendation of the majority, with retrospective effect from April 1, 1933, (*i*) the Imperial Government shall contribute to India's defence expenditure £1·5 millions; (*ii*) the Air Ministry's payment to India shall be increased by £200,000, but the War Office payment shall be reduced by £93,000. It has been calculated that as a result the Indian tax-payer will be relieved of the cost of ten British infantry battalions in all. A net saving of about two crores only in a budget of about 47 crores is expected

CHAPTER TWELVE

LOCAL SELF-GOVERNMENT

The functions of government are divided or grouped according to the areas in which the functions are administered. In a province there are functions which are administered in small areas, such as districts, subdivisions, cities, towns, etc. In each such area there is a committee, board or council entrusted with the administration of the area in particular matters committeed to their charge. These bodies are called local self-governing institutions.

As examples of local self-governing institutions in India may be mentioned the district boards, the local (or subdivisional) boards, the taluka boards, the union boards, the village panchayats, the municipalities. There are besides such bodies as Improvement Trusts, Port Trusts, Cantonment Committees, and in some of the provinces, bodies known as "Notified Areas" and "Small Towns", etc.

Local Bodies in Ancient India

The local self-governing institutions established in India under British rule were modelled after the British pattern, although India had her own indigenous system of local self-government. Elaborate accounts describing the constitution and purposes of local self-governing bodies in pre-British India are available.[1] These prove beyond

1 Edward Jenks says that recent researches into the history of administration in British India reveal clearly that "there survived, down to the establishment of British rule, though almost obliteratd by the countless waves of conquest which had passed over India, a vast net-work of local and self-governing institutions, of almost immemorial antiquity . . . . . The village institutions of native India comprise not only a great number of village officials, rendering sanitary, police, educational and even

doubt the popular and beneficent character of the activities of many of these bodies.

In his account of the local administration in India existing at the time of his visit, Megasthenes[2] refers to six boards of five each for the administration of towns. The Greek ambassador bears testimony to the existence of such institutions in various parts of the country Well-authenticated and detailed accounts are now available testifying to the working of institutions of a similar character in Southern India during those and much later periods of history.[3]

The indigenous system of government in ancient India was, in fact, based on the village as the fundamental unit of administration. There were officers of the King, of varying degrees of authority, through whom the King maintained watch over the

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judicial services, but even widely spread throughout the country, a rudimentary village council of elders (*panchayat*) chosen by the oldest known form of election, *viz.*, the casting of lots, to discuss the affairs of the village".—*The Government of the British Empire* (1918), p. 388.

Sir William Jones in his Preface to Houghton's *Institutes of Hindu Law,* writes: "Although perhaps Manu was never in Crete, yet some of his institutions may well have been adopted in that island, whence Lycurgus a century or two after may have imported them into Sparta".

2 "The respective functions were:

(1) supervision of factories;
(2) care of strangers including control of the inns, provision of assistants, taking charge of sick persons, burying the dead;
(3) registration of births and deaths, control of the markets, inspection of weights and measures;
(5) the inspection of manufactured things, provision for their sale with accurate distinciton of new and second-hand articles;
(6) collection of the tax of 10 percent charged on sales. The six Boards acting together exercised a general superintendence over public works, prices, harbours, and temples".

3 "It can scarcely be denied that in the ordinary villages a democratic form of government prevailed when the British took possession of the country. Neither ancient nor modern history in Europe can show a system of local self-government more scientifically planned, nor one which provided more effective

villages. It has, however, been pointed out that "it does not appear that as a rule there was 'anything of the nature of a political institution between the village and the Central Government', nor any administrative unit between the village and the Kingdom which had a recognised place in the consciousness of the people" [4]

Beginnings of the Present System

The beginnings of local self-government in India before the days of Lord Mayo were of a very rudimentary nature and were mainly inspired by considerations of administrative convenience. Elected members and popular participation were a rarity.

Lord Mayo in enunciating his project of financial decentralisation in 1870 emphasised the importance of the development of local self-government. In enumerating the advantages likely to accrue from his scheme, he said that,

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safeguards against abuses, than that which was worked out by Aryan philosophers as the social and political basis of Indo-Aryan religion. (E. B. Havell—*The History of Aryan Rule in India*). The fifth report of the Select Committee of the House of Commons accurately describes how the village republics had survived invasions, convulsions and monarchy after monarchy. . . . . These village assemblies administered justice—both civil and criminal. The supreme government dealt with them and not with the inhabitants of the villages. They apportioned the revenue or tax among the inhabitants. They owned the public lands, and not the government. They consisted of elected members. We have got the election rules, containing the qualifications, disqualifications, etc., in detail of the electors of long ago preserved in inscriptions. But they were incompatible with the revenue system of the British Government and with their administration of civil and criminal justice. The old village officials were converted by our government into government servants and became, according to popular view, government tyrants. The village entity was not recognised and in some provinces was destroyed by legislation. The common lands became government lands. The so-called village organisations which are the creation of British legislation or administration bear no resemblance to the ancient assemblies." Sir Sankaran Nair in his *Note of Dissent to the First Despatch of the Government of India on Montagu-Chelmsford Reforms.*

[4] J. Matthai—*Village Government in British India.*

among other things, "seed will be sown which may ripen gradually into a system of local self-government". His scheme, his lordship declared, would eventually tend to associate more and more the children of the soil in the conduct of public affairs.

The Resolution on financial decentralisation further said: "But beyond all this, there is a greater and wider object in view. Local interest, supervision and care are necessary to success in the management of funds devoted to Education, Sanitation, Medical, Charity and Local Public Works. The operation of this Resolution in its full meaning and integrity, will afford opportunities for the development of self-government, for strengthening municipal institutions, and for the association of Natives and Europeans, to a greater extent than heretofore, in the administration of affairs". The policy and principles laid down by Lord Mayo found limited and tentative application mainly through some of the self-governing bodies established in the provinces.

Lord Ripon's Policy

Lord Ripon, who became Viceroy of India in 1880, may be said to have laid the foundation of the present system of local self-governing institutions. In a Resolution on Provincial Finance issued in 1881 his lordship indicated the lines of advance he had in view. The Provincial agreements, the Resolution urged, should no longer exclude from all consideration the mass of taxation under Local and Municipal management, together with the similar resources still retained in provincial control, and ignore the question of local self-government. The Resolution added:

"The Provincial Governments, while being now largely endowed from Imperial resources, may in their turn, hand over to local self-government considerable revenue at present kept in their own hands, but similar in kind to many which have long been 'locally' managed with success by committees, partly

composed of non-official members, and subject only to a general remedial control reserved to the State by the Legislature. At the same time, such items should be generally made Local as the people are most likely to be able to understand the use of and to administer well".

A subsequent Resolution issued in 1882 laid down in clear and distinct terms the policy to be followed in fostering local self-governing institutions all over the country. The Resolution said:

"It is not primarily with a view to improvement in administration that this measure is put forward and supported. It is chiefly desirable as an instrument of political and popular education. His Excellency in Council has no doubt that, in course of time, as local knowledge and local interest are brought to bear more freely upon local administration improved efficiency will, in fact, follow. But at starting there will doubtless be many failures, calculated to discourage exaggerated hopes, and even in some cases to cast apparent discredit upon the practice of self-government itself. If, however, the officers of government only set themselves as the Governor-General in Council believes they will, to foster sedulously the small beginnings of the independent political life; if they will accept loyally and as their own the policy of the Government, and if they come to realise that the system really opens to them a fairer field for the exercise of administrative tact and directive energy than the more autocratic system which it supersedes, then it may be hoped that the period of failures will be short and that real and substantial progress will very soon become manifest".

Lord Ripon laid down a broad and statesmanlike policy. With reference to the relations between the various local bodies and Government his lordship proposed a salutary principle. While acknowledging that there should be a certain measure of control and inspection on the part of Government, His Excellency declared that: "It would be hopeless to expect any real development of self-government if the local bodies were subject to check and interference in matters of detail."

Measures were immediately taken to give effect to the policy thus laid down and quite a number of municipalities and rural bodies were constituted in the provinces. The constitution and powers of these bodies were not exactly alike in all parts of the country. In some of the provinces the elected members formed a decisive majority. The district and subdivisional boards had a larger element of nominated and official members. Many of the municipal bodies had non-official elected Chairmen; but in district and subdivisional boards a nominated Chairman,—either the district Collector and Magistrate in case of district boards or the subdivisional officer in case of subdivisional (or local) boards,—was the rule. The rural boards were thus almost entirely under official tutelage. In the case of municipal bodies elected non-officials had some power and influence. The authorities, however, lacked the foresight and the courage needed to give effect to the bold policy enunciated by Lord Ripon by freeing the local self-governing institutions from official interference and direction. This checked and hindered a proper development of a system of genuine local self-government in the country.

Proposals of the Commission on Decentralisation

The Royal Commission on Decentralisation in their Report, issued in 1909, among other things, had made a number of recommendations relating to local self-governing institutions. The general trend of their proposals was towards liberalising the constitution of these bodies, relaxing official control and extending their influence and activities. The Government of India took a long time to consider these proposals. At length in 1915 they issued a Resolution indicating how far they were prepared to advance in the direction of the main recommendations of the Commission. "They propose in varying degrees", the Resolution declared, "to expand the electoral element in the constitution of local bodies, to extend the employment of non-official chairmen in municipalities, to allow local bodies more ample control over budgets and freer powers of re-appropriation, to concede increased authority to local bodies over establishments and to release existing restrictions in regard to outside sanction for expenditure on works of importance".

At the time when the Resolution was issued there were altogether 695 Chairmen of municipalities. Out of these 422 were officials; of these again 248 were elected and 174 nominated. Of the non-official Chairmen 222 were elected and 51 nominated. The figures indicate to what extent the intentions of Lord Ripon's generous policy had been rendered ineffective in practice.

The Decentralisation Commission recommended that village panchayats be constituted and that they be endowed with certain administrative powers with jurisdiction in civil and criminal cases. It was further suggested that such institutions should be financed by a portion of the land-cess, special grants, receipts from village cattle pounds, markets and small civil suits. The Resolution expressed the sympathy of the Government of India with these recommendations of the Commission. The proposals of the Government were, however, of an extremely cautious and tentative nature. The results in the direction of village organisation in this circumstance could not but be anything more than of a nominal character.

Formula of Popular Control

A very important stage in the history of the evolution of local self-governing institutions in India was reached in 1918, the year in which the Report on Indian Constitutional Reforms was published. As we have seen, the Report laid down four principles on which the proposed reforms were to be based. The first of these related to local self-government. In ran thus: "There should be, as far as possible complete popular control in local bodies and the largest possible independence for them of outside control." It was of the utmost importance to the constitutional progress of the country, the Montagu-Chelmsford Report said, that every effort should be made in local bodies to extend the franchise, to arouse interest in elections, and to develop local committees, so that education in citizenship may, as far as possible, be extended, and everywhere begin in a practical manner. "If our

proposals for changes on the higher levels are to be a success", the authors of the Report further declared, "there must be no hesitation or paltering about changes in local bodies. Responsible institutions will not be stably rooted until they become broadbased, and far-sighted Indian politicians will find no field into which their energies can be more profitably thrown than in developing the boroughs and communes of their country".

Lord Chelmsford's Government had already considered what further progress along the road of local self-government was immediately possible and they had decided upon a move forward. It was proposed to introduce important changes in the constitution and powers of both municipal and local bodies along with material relaxation of Government control in respect of taxation, budgets, the sanction of works and local establishments, etc. Further, the local self-governing bodies were to be released from the constant dictation, in matters of detail, that was then exercised by Government. These proposals were before the authors of the Montagu-Chelmsford Report when they formulated their scheme of reforms.

Policy under the Reforms

Almost simultaneously with the publication of the Montagu-Chelmsford Report, the Government of India published a Resolution on their Local self-government policy. It intimated the lines on which, in the altered circumstances of the time, the Government of India desired the Provincial Governments to move in the direction of more complete local self-government. The Resolution emphasised the important fact that "the object of local self-government is to train the people in the management of their own local affairs and that political education of this sort must, in the main, take precedence of considerations of departmental efficiency". At the moment something over a half of the members in municipalities and a

little under a half in rural boards were elected. The Resolution urged that in case of both municipal and rural bodies a substantial increase in the existing elective element should be secured. The Government of India discouraged communal or proportional representation. As regards special representation of official experience, they pointed out that this could be secured adequately by the nomination to the board of men possessed of such experience for purposes of advice or discussion only and without the right of voting.

The proposed increase in the elective element of local self-governing bodies should, the Government of India insisted, be accompanied by a substantial extension of franchise. The Resolution quoted the figures of 1916 to show that at the time out of 191 district boards only 13 had elected non-official Chairmen, and as regards sub-district boards, out of a total of 525, the Chairmanship of 41, mostly in Bengal, was held by elected non-officials, and of 20, nearly all in Madras, by nominated non-officials. The Government of India urged the election of Chairmen, whenever this was possible, and when this was not possible, to encourage the appointment of non-official Chairmen. The other proposals of Government were in keeping with the spirit underlying their decisions placed before the authors of the Montagu-Chelmsford Report. With reference to control by Government they laid down in definite terms the general principle that "except in cases of really grave mismanagement, local bodies should be permitted to make mistakes and learn by them rather than be subjected to interference either from within or from outside".

The introduction of the Constitutional Reforms in 1921 brought about a fundamental change in the policy to be pursued henceforth with reference to local self-governing institutions. Although such bodies had so far been governed in accordance with the provisions of Acts passed in provincial legislative councils, the Government of India generally determined questions of policy and settled important details of procedure. When, for instance, the Bill that was subsequently passed as the Calcutta

Municipal Act of 1899 was under consideration, important changes were incorporated in the measure at the instance of Lord Curzon, then Viceroy of India. These changes rendered the Corporation of Calcutta even a much more officialised body than the inspirer of the measure, Sir Alexander Mackenzie, Lieutenant-Governor of Bengal had desired to make it.

As in the reformed constitution, local self-government is a provincial transferred subject, it has to be administered by a minister selected from among the elected members of the legislative council. This must be a real advantage when the minister is a responsible minister and the Council is a truly representative body. Owing, however, to the political situation created by the non-co-operation and civil disobedience movement very influential sections of politically minded people either did not take part in the elections or came out of the legislatures, except for a part of the period of twelve years that have elapsed since the introduction of the new system. The situation favoured the appointment of members as ministers who were neither 'popular' nor 'responsible' in the real sense of those terms.

Presidency Municipalities

Among the local self-governing institutions in the country, the most important are the three Presidency Municipalities. The Municipal Corporation of Rangoon also belongs to this category of municipalities.

The history of these institutions* under British rule in India may be said to have begun from the year 1687. In that year James II, King of England, granted to the East India Company by Charter the power of constituting a Corporation and Mayor's

* *Vide*, an illuminating article on "Local-Self-Government" by Mr. S. N. Mallik, C.I.E., in the Anniversary number of the *Calcutta Municipal Gazette* (1929).

Court, with a Mayor, aldermen and burgesses, in Madras. The Corporation was authorised to impose taxes from residents for such purposes as improvement of roads, undertaking lighting, conservancy and similar duties of a city corporation, and building a town-hall, a jail, a school house, etc. Owing, however, to the opposition of the people to the imposition of direct taxation in any form, the Corporation was not able to perform its function until permission was obtained to levy an octroi duty to provide the funds for street-cleaning.

The Charter Act of 1726 constituted Mayor's Courts in the three Presidency towns, whose functions were more judicial than administrative. The Regulating Act also conceded the power of levying taxes for local purposes to these bodies.

The Charter Act of 1793 provided for the appointment of Justices of the Peace for the three Presidency towns. In addition to the judicial duties entrusted to them, the Justices of the Peace were empowered to raise funds by assessing the lands and houses in the towns for scavenging, keeping watch and ward, and for the maintenance of streets.

The municipal bodies at the Presidency capitals in the beginning were officialised or nominated bodies. Some time after the passing of the India Councils Act in 1861 legislation was introduced for the reconstitution of municipal bodies in the three Presidency towns. Bombay, Calcutta and Madras were granted the power of electing representatives of ratepayers in 1872, 1876 and 1878 respectively. The municipal bodies of the three Presidency towns passed through various stages of development until the Bombay Municipal Act (1888), the Calcutta Municipal Act (1923) and the Madras Municipal Act (1919) made the Presidency municipal corporations more or less autonomous self-governing institutions. Certain changes have since been introduced. In some cases the institutions have been made more popular, while in others some of the powers enjoyed by them have been curtailed.

Bombay Corporation

The Corporation of Bombay was regarded as the most important among the Presidency Municipal corporations. This was so because it possessed a comparatively more popular constitution than other similar bodies at an earlier stage. A notable feature of its constitution was an elected President with a Chief Executive Officer. The Chief Executive Officer was known as the Commissioner and was nominated by Government. The President, who is now called the Mayor, is the official mouthpiece of the Corporation as a whole, the executive administration vesting in the Executive Officer subject to the control of the Corporation and the Standing Committee.

Although the Chief Executive Officer in Bombay is a high officer of Government, being generally a senior member of the Indian Civil Service, he is a servant of the Corporation and is removable by that body.[5] The special feature of an elected President with a Chief Executive Officer has since been introduced in other such bodies. In Calcutta the Chief Executive Officer is now a salaried officer appointed by the Corporation. This is in conformity with the British system.[6]

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5 "The Municipal Commissioner for the city of Bombay shall be from time to time appointed by the Governor-in-Council for a renewable period of three years. But he shall be forthwith removed by Government from office, if at a meeting of the Corporation not less than 24 councillors shall vote in favour of a proposition in this behalf, and he may be removed by the Governor-in-Council, at any time, if it shall appear to the Governor-in-Council that he is incapable of performing the duties of his office or has been guilty of any misconduct or neglect which renders his removal expedient".

6 In England the Mayor has no executive power; he, however, exercises very great influence in the direction of policy by the local body concerned. The officer in municipal bodies in England corresponding to the Chief Executive Officers of Presidency municipal corporations in India is known as the Town Clerk. "He is always a trained lawyer, for legal points are constantly arising in connection with his work. His duty is not only to act as secretary

The Corporation of Bombay consists of 108 councillors. Of these 84 are elected, 10 coopted and 14 nominated. These include 1 councillor appointed by the Bombay Chamber of Commerce, 1 appointed by the Indian Merchants Chamber and Bureau, 1 appointed by the Bombay Millowners' Association, and 1 appointed by the Fellows of the Bombay University.*

Madras Corporation

In Madras the Corporation consists of 50 councillors. These are elected or appointed in the following manner: 30 are elected by the rate-payers, 3 elected by the Madras Chamber of Commerce, 2 by the South Indian Chamber of Commerce, and 3 by the Traders Association, 3 elected or appointed by such other associations or corporate bodies as the Provincial Government may by notification direct, and 9 appointed by the Provincial Government who in making such appointments, shall have regard to the representation of Mahomedan and other minorities. The Madras Corporation has now a Mayor besides the Commissioner, who is the Chief Executive Officer. The Commissioner is to be appointed by the Governor-in-Council and is not to be a member of the Council.

Rangoon Corporation

The Municipal Corporation of the city of Rangoon consists of 34 members, of these 10 are elected by the Burmese community including such other indigenous races as the Karens, the Arakanese, and the Shans; 5 by the European and Anglo-Indian communities including British colonials, 4 by the Mahomedan community, 4 by the Hindu community (including other non-Mahomedan Indians), 2 by the Chinese community, and 1 each by the Burma Chamber of Commerce, the Commissioners for the

to the Council, he must also serve as a link between the various departments and committees. All the most important business passes through his hands, and he soon acquires a through knowledge of local affairs. An experienced town clerk is a constant source of information for the Council and its committees". Conrad Gill—*Government and People* (1931).

* These figures are for 1931-32. Recently some changes have been introduced. There are now, for instance, 4 representatives of registered trade unions among the councillors.

Port of Rangoon, the Rangon Trades Association, and the Trustees of the Rangoon Development Trust. The remaining 5 members are nominated by the Provincial Government. The Corporation has an elected President. There is a Commissioner, who is the Chief Executive Officer, nominated by the Provincial Government.

Calcutta Corporation

A corporation consisting of the Justices of the Peace residing in Calcutta with a nominated President was established in 1863. This body was replaced in 1876 by a Corporation consisting of 48 members elected by the rate-payers and 24 nominated by Government with a nominated President. The Act of 1899 reduced the number of members to 50. Out of these 25 were elected by the rate-payers, four by the Bengal Chamber of Commerce, four by the Calcutta Trades Association and two by the Port Commissioners of Calcutta and the rest were nominated. The Corporation had a standing committee of twelve members and there was a nominated Chairman. This measure came into force during the Viceroyalty of Lord Curzon. The Chairman, who was the chief executive officer of the Corporation, was a senior member of the Indian Civil Service and enjoyed large powers. The reconstituted Corporation was more an officialised, than a real self-governing body, amenable to adequate popular check or control.

It may be recalled that twenty-eight members led by Mr. Surendranath Banerjea resigned their seats on the Corporation as a protest against the attitude of Government in the controversy that led to the constitution of the Corporation in accordance with the provisions of the Act of 1899. A quarter of a century later, when Sir Surendranath Banerjea was Minister of Local Self-Government, opportunity occurred to him to undo the wrong done to the Corporation of Calcutta.

The Calcutta Municipal Act of 1923 was Sir Surendranath Banerjea's handwork. It is known as Bengal Act III of 1923. The constitution of the Corporation was largely liberalised by the Act. Although there is still a nomi-

nated element, the proportion has been considerably reduced. The total number of Councillors is now 91. There are besides 5 aldermen elected by the Councillors. Of the 91 councillors, 81 are elected and ten nominated by Government. Of the elected members 12 are returned by special constituencies such as the Bengal Chamber of Commerce, the Calcutta Trades Association and the Calcutta Port Commissioners. The remainder are elected by the ratepayers. Twenty-one seats to be elected by the ratepayers have now been reserved for Mahomedans. These are returned by joint or general electorates.[7]

The Corporation has a Mayor, a Deputy Mayor, an Executive Officer and two Deputy Executive Officers. These are all appointed by the Corporation. The Mayor replaces the Chairman of the old Act.

It is provided that an elected councillor or alderman shall hold office for a term of three years. Nominated councillors shall, however, hold office for a term of three years or for such shorter period as the Provincial Government may, at the time of appointment determine. Every person who is elected or appointed to be a councillor, or elected an alderman shall before taking his seat make, at a meeting of the Corporation, an oath of affirmation of his allegiance to the Crown.

Any person paying directly to the Corporation annually a sum not less than Rs. 12, either as municipal rate as owner or occupier of houses or lands or as professional or license tax, or in respect of both such rate and tax, is qualified as an elector to a general constituency, provided his name is registered as a voter in proper time as laid down in the Act, if he or she is not under twenty-one years of age or has not any of the disqualifications

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7 In the case of Mahomedans it was provided that there should be separate electorates for them for ten years at the end of which the arrangement would be revised. This has now been done, and elections are held in joint electorates with seats earmarked for Mahomedans.

mentioned in the Act. Any person is eligible for election or appointment as a councillor or for election as an alderman if his name has been duly registered on the electoral roll and if he has none of the general disqualifications for being a councillor or alderman. Women are eligible for election as councillor or alderman.

The principal sources of revenue of the Calcutta Corporation are : a consolidated rate not exceeding 23 per cent on the annual value of lands and buildings, including the water rate; the tax on carriages and animals; the tax on professions, trades and callings; the scavenging tax; and the tax on carts. The other sources of income are rents from municipal lands and houses, sale proceeds of sulplus lands, rents from markets, slaughter houses and dhobikhanas, sale of water to sea-going ships, etc. interest on surplus cash, proceeds from loans, fines, etc., realised from the municipal magistrate's courts, fees from public utility companies, contributions from Government, etc.

The main functions of the Corporation include regulation, maintenance, protection and repair of streets and public places; provision of arrangements for water supply, drainage, conservancy, lighting and scavenging; regulation of public bathing and washing; inspection and regulation of premises and of factories, trades and places of public resort; provision and maintenance of markets, bazars and slaughter places; registration of births and deaths and provision of proper arrangements for the disposal of the dead; restraint of infection; taking of census; acquisition, disposal and general improvement of land and building; and other activities falling under the heads of public saftey, health and convenience.[8]

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8 The Act provides for an annual expenditure of a lakh of rupees for promoting primary education among boys between the ages of six and twelve years and girls between the ages of six and ten years residing in Calcutta. Very comprehensive powers are given to the Corporation for arranging for the supply of pure and unadulterated milk, and other dairy produce. In addition to these the Corporation is empowered to provide for the promotion of such objects as technical and industrial education and free libraries, construction and maintenance of hospitals, infirmaries, almshouses, asylums, orphanages, etc., etc.

The Corporation of Calcutta has instituted a system of

Government Control

The Act reserves to Government adequate powers for controlling the activities of the Corporation. In the first instance the appointment, salary, allowances and conditions of service of the Chief Executive Office, Chief Engineer, Health Officer and Deputy Executive Officer or Officers, and any action taken by the Corporation with a view to the termination of their appointment shall be subject to the approval of the Provincial Government. The sanction of Government is required to projects costing rupees two lakhs and a half or more. Government may require the Corporation to furnish it with any papers or information regarding any matter under the control of the Corporation. It may depute any officer or officers to make an inspection or examination of any

standing committees for carrying on its work. These committees are elected annually and specific functions, powers and duties are delegated to them. Relevant matters for enquiry and report or opinion may also be referred to them. Such a committee is to consist of not more than twelve members, two of the members being appointed Chairman and Deputy Chairman. A standing committee of the Corporation may appoint one or more sub-committees. It shall not be necessary for any of the members of a sub-committee to be a member of the standing committee appointing such sub-committee. There are also similar district standing committees, each district consisting of a group of wards. Each such district standing committee consists of all the councillors for the several constituencies composed in each district and any alderman or other councillor living within the district and expressing his willingness to serve on such committee. Each such committee has to associate with itself not more than three members, elected annually by such committee.

Special committees also may be appointed by the Corporation in connection with any of its functions, powers or duties. The Corporation may associate with such special committee for such period as it thinks fit, any persons, who are not councillors or aldermen, but whose assistance or advice is required for the purposes for which the special committee is appointed. The Corporation has to appoint a standing committee called the Primary Education Standing Committee to advise it in regard to all matters relating to primary education in Calcutta. This committee is to consist of not more than six councillors or aldermen, associated with such other persons, not exceeding three in number, as the Corporation may from time to time and for such period as it thinks fit, determine by a special resolution.

department, office, service, work, or thing under the control of the Corporation, and to report to it the result of such inspection or examination. In such case the Corporation has to comply without any delay, with any requisition for any record or correspondence, or other paper that may be made to it. Government possesses the power to annul any proceeding of the Corporation which it may consider not to be in conformity with law and may do all things necessary to secure such conformity. Further Government has large powers of intervention through audit.

In addition to these, the Calcutta Municipal (Amendment) Act of 1933, confers on Government very extensive powers of control and intervention. It is laid down that without the previous sanction of the Provincial Government in each case, no person shall be appointed as a municipal officer or servant if he has been convicted for offence against the State or has been sentenced to imprisonment for a term of three months or more. Further, any authority who knowingly appoints such a person shall, if any payment is made in consequence of such appointment be deemed to have authorised the making of an illegal payment. It is also provided that no grant should be paid for the promotion of primary education to any institution which has taken into employment any person or to any person, who has been convicted of an offence against the State or sentenced to imprisonment for a term of three months or more. Provisions of a stringent nature have been incorporated in the Amending Act in regard to the audit procedure and auditors are authorised to introduce an elaborate system of disallowance, surcharge and charge. It is laid down that any councillor, alderman or member of a committee present at a meeting at which a motion or a resolution is passed authorising expenditure which is subsequently disallowed or authorising any action which leads to expenditure afterwards so disallowed, shall be deemed to be a person authorising the illegal payment, if he votes for such motion or resolution; and all persons so voting shall be held jointly and severally responsible for the expenditure. If any sum certified by the auditors to be due from a councillor, alderman, or member of a committee or from any officer or servant of the Corporation is not paid by such person in due time, he shall be deemed to have vacated his seat or to have been dismissed from the service of the Corporation, as the case may be. He shall not

further be eligible for election or reappointment until the sum has been paid or the certificate in respect of such sum has been set aside in accordance with the provision of the Amending Act.

Municipalities outside Presidency Towns

The beginnings of municipal government outside the Presidency towns in India may be said to have originated with the passing of Act XXVI of 1850. The measure provided for the constitution of town committees, and the levy by them of certain indirect taxation. In this connection it is interesting to note that although Bengal had taken before this the first step among the provinces in attempting to introduce municipalities in the country towns by an Act passed in 1842, the measure proved abortive. Lord Mayo's scheme of financial decentralisation led to the passing of Municipal Acts in the Provinces between 1871 and 1874. This resulted in a development of local self-government by an inclusion of the principles of election and an extension of the sphere of municipal administration. Lord Ripon's policy on Local self-government introduced in 1882 led to the adoption of new Municipal Acts in the various provinces providing for an extension of the principle of election in the constitution of municipalities. Some of the municipal bodies were allowed to elect non-officials as Chairman. There was besides provision for an increase in the resources and financial responsibilities of these bodies.

The Government of India issued in 1918 instructions announcing a gradual withdrawal of official control ; and with the introduction of the Constitutional Reforms in 1921, the control of self-governing institutions was transferred to Indian ministers in the provinces.

The twelve years that have passed since the inauguration of the Montagu-Chelmsford reforms have seen the reconstitution of mofussil municipalities in the different provinces. These bodies do not possess a uniform constitution everywhere, although they have similar characteristics and are mainly guided by the same

principles. In Bombay and Madras, for instance, efforts have been made to do away with the nominated element. In Madras it is provided that all the councillors of every municipality shall be elected. In Bombay it is laid down that Government may direct that all the councillors shall be elected. It is further provided that the number of elected councillors shall not be less than four-fifths of the whole number. In some of the provinces the principle of communal representation has been definitely incorporated in the constitution. There are some provinces which are still wedded to the system of official Chairmen. There are others which have realised the importance of having properly qualified Chief Executive Officers along with non-official elected Presidents or Chairmen for an efficient administration of local self-governing bodies.

In Bengal, three-fourths of the total number of members of municipalities are to be elected and one-fourth appointed by Government. In the case of three specified municipalities, namely, those at Howrah, Dacca, and Chittagong, four-fifths of the total number of members are to be elected and the rest to be appointed by Government. The Provincial Government may, at any time, include in or exclude from this group the name of any municipality. Representation of minority communities has been provided by reserving a number of seats for them, the number so reserved being in accordance with the proportion borne by such community to the total population of the municipality according to the latest census. It rests with the Provincial Government to determine whether any community in a municipality is to be deemed to be a minority community, for the purposes of that municipal body. The Chairman and the Vice-Chairman are to be elected non-officials.

Besides fulfilling the rules regarding qualification of a commissioner, on or before the date fixed for the nomination of candidates, each candidate for election of a commissioner, has to deposit with the Chairman the sum of rupees one hundred in cash. It is provided that every person who is elected or appointed to be a

commissioner shall, before taking his seat, make at a meeting of the Commissioners, an oath or affirmation of his allegiance to the Crown

The Provincial Government may, if it thinks necessary after consulting the Commissioners, require any municipality or class of municipalities to appoint all or any of the following officers: (*a*) Secretary, (*b*) an Engineer, (*c*) a Health Officer and (*d*) one or more Sanitary Inspectors. In like manner municipalities having an income of over rupees one lakh a year may be required to appoint an Executive Officer who will be the principal executive officer of the municipality and all other officers and servants of the municipality shall be subordinate to him. Subject to the powers delegated to him the executive officer shall be under the direction of the Chairman through whom he shall be responsible to the Commissioners.[9]

A municipality is authorised to impose the following taxes: (*a*) a rate or holding assessed on their annual value; (*b*) a water-rate; (*c*) a lighting rate; (*d*) a conservancy, latrine and drainage rate; (*e*) a tax on carriages, and on horses and other specified animals; (*f*) a tax on specified trades, professions and callings; (*g*) a tax on the registration of carts; (*h*) tolls on ferries and on bridges; (*i*) a fee on vessels moored within the limits of the municipality at ghats or landing places constructed and maintained by the Commissioners; and (*j*) any other tax which the municipality is empowered to impose under any law for the time being in force. The municipality may further charge a fee in respect of the issue and renewal of any license which may be granted to it and in respect of which no fee or tax is otherwise leviable.

A voter for a municipal election must be of 21 years of age, and must have been resident or in occupation of a holding and carrying on any trade or profession within the limits of the municipality for at least one year before the preparation of the electoral roll, and must have either paid a minimum amount of municipal

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[9] A municipality may appoint standing committees, and an education committee. A proportion of the total number of members of these committees may be persons other than commissioners. A municipality may join with another local authority in constituting out of their respective bodies a joint committee, for any purpose in which they are jointly interested.

fees and taxes or has been assessed to income tax or has passed at least the matriculation examination, or the senior Madrasah, or the Sanskrit Title Examination.

A candidate for Commissionership in a municipality must satisfy the qualifications of a voter; must not be a municipal officer or hold any office of profit under the commissioners; and must not directly or indirectly have any share or interest in any contract or employment with the commissioners. Further, a person cannot be a candidate, if he had been convicted by a criminal court of an offence involving moral turpitude and carrying with it a sentence for a period of more than six months, for five years from the date of the expiration of the sentence, unless he secures permission from the Government.

Rural Boards

When the Government of India was transferred from the East India Company to the British Crown such institutions as rural boards were not in existence in the country. In Bombay and Madras semi-voluntary funds were raised for local improvement. There were, however, in Bengal and in the United Provinces consultative committees for assisting the district officers in the management of funds devoted to local schools, roads and dispensaries.

Between the years 1865 and 1869 legislative measures were adopted for raising cesses on lands for similar purposes in Madras and Bombay. The scheme of financial decentralisation of Lord Mayo, to which reference has already been made, necessitated legislation for the levy of local taxation and the constitution of rural boards or committees to manage the funds raised in Madras, Bengal, the United Provinces and the Punjab. The Committees so constituted were nominated, except in Bengal where there was provision for the election of members by rate-payers. Latterly as a result of the policy of Lord Ripon, boards were composed of elected and nominated official and non-official members. For a long time most of these boards were presided over by nominated Chairmen, mostly officials.

These boards now generally consist of a majority of non-official elected members, with elected non-official Chairmen in many cases. As in the case of municipalities,

important changes in the constitution of rural boards have also in many provinces been introduced since the present constitutional reforms came into operation. The changes in all the provinces have not, however, been of a uniformly progressive character. In Madras, for instance, a policy of co-ordinating and integrating the work of the district boards, taluka boards and the village organisations and of eliminating the nominated element has been vigorously followed.[10] In many cases, the changes introduced in the constitutions of rural boards and municipalities run on parallel lines, such changes being often of an identical character in both sets of local self-governing institutions.

In Bengal, not less than two-thirds of the members of a district board or local board shall be elected. Although the general practice at present is to have elected Chairmen for district boards, the Government has reserved to itself the power of appointing them, if and when such a course is considered necessary by Government. Vice-Chairmen of district boards are elected. In case of local boards, both Chairmen and Vice-Chairmen are to be elected. There is provision for the appointment of an executive officer, as also such other officers as secretary, district engineer, health officer, etc., under certain conditions. Representation of minority communities is provided in the same way as in municipalities. A candidate for election has to make a deposit with the magistrate of the district. Elected or appointed members of boards have to take an oath or affirmation of allegiance to the Crown. The term of district and local boards is four years.

The present source of income of a district board are : proceeds from the local road and public works cess; contributions from

10 In a *Communique* (Jan. 6, 1934) the Madras Government announced their intention to abolish taluka boards and transfer all their functions to district boards, except taluka libraries in panchayat areas which will be transferred to panchayats. It is also proposed to split up district boards, where financial conditions permit.

the Provincial Government for specified purposes; tolls and ferries; all sums realised as fines, penalties, etc., all sums contributed to the district board by local bodies, private persons and companies, loans and other miscellaneous receipts. These receipts constitute the District Fund.

The functions of district boards in respect of their areas are of an almost identical character with the functions performed by municipal bodies in their areas. These powers fall under the following heads: medical, including sanitation, vaccination and public health; public works, including roads and bridges; education; pounds; famine and distress; census, etc.

District boards in Bengal possess comprehensive powers for the control of schools in their jurisdiction, especially primary and middle English schools, including junior madrasahs. It is provided that every district board shall form an Education Committee, consisting of (*a*) the Deputy Inspector of Schools; (*b*) three members of the district board; and (*c*) not more than three residents of the district not being members of the district board. The appointment of any person referred to in class (*c*) to be a member of an Education Committee shall be subject to the approval of the Commissioner of the Division and when his appointment has been so approved, such person shall be deemed to be a member of the district board. It shall be the duty of an Education Committee, subject to the control of the district board, (i) to superintend all matters connected with the finances, accounts, maintenance and management of all schools maintained by the district board, and (*iii*) to determine the conditions to be complied with when grants are made by the district board in aid of other schools.

Union Committees

We have seen that the Decentralisation Commission recommended the introduction of a comprehensive system of village organisation. Steps were taken by some of the Provincial Governments to give effect to this recommendation, in pursuance of the policy enunciated by the Government of India in the matter. The measures that were adopted were, however, more or less of a very elementary or inadequate character. Of late efforts have been

made to make the village organisations more effective and useful self-governing institutions by linking them with the district and local boards. In this matter also Madras has followed a more enlightened and liberal policy than others. In some of the provinces the village organisations that have so far been established are still in an embryonic stage. In Bengal, the Village Self-government Act of 1919 introduced such organisations. But the measure conferred very little power on such bodies which were almost entirely under official tutelage.

The Bengal Self-Government Act of 1885, as modified up to the 1st September, 1933, attempts to render village organisations more useful self-governing institutions. Any village or group of villages may now be constituted into a Union. The number of members of which the Union committee is to consist shall not be less than five or more than nine. The members are to be elected and there is to be an elected Chairman. The Provincial Government may, however, if it so desires, direct that any Union committee shall consist, either wholly or in part, of members appointed by the Commissioner of the Division.

The Union committees may be entrusted with certain functions, as agents of the district board, subject to the latter's control. A Union committee can not incur expenses, or undertake liabilities, to any amount exceeding the limit imposed by the district board. The functions of Union committees fall under the following heads: village roads and bridges, pounds, primary schools, dispensaries, registration of births and deaths, sanitation, conservancy and drainage, cleaning of villages, and water supply.

Other Local Bodies

There are, besides, Improvement Trusts in respect of such cities as Calcutta, Bombay, Lucknow, Allahabad, Cawnpore, etc. These bodies have been set up for the improvement and expansion of such cities. Further, Port Trusts, such as the Calcutta Port Trust, the Bombay Port Trust, the Madras Port Trust, etc., have been specially constituted for the administration of the affairs of the ports in India. The Trusts have official Chairmen with a strong official and European element in them.

A large number of urban areas where troops are stationed are outside the administrative area of municipalities. These are called

Cantonments. They are administered by Boards, with official presidents. Such bodies are under the final control of the Army Department of the Government of India. There are also in some provinces small areas described as "Notified Areas" or "Small Towns". Their affairs are administered by committees or boards. All such bodies may be included in the category of local self-governing institutions.

We have seen how comprehensive are the powers of control that the Provincial Government exercises over the Calcutta Corporation. Similar powers are possessed by the Government in respect of the mofussil municipalities, rural boards, and other such institutions. In certain cases these powers are exercised through Commissioners of Divisions and District Magistrates. In some of the provinces the control is closer than in others, but it is still of a very pervasive character. It may further be noted that a nominated element and a narrow franchise are still very important features of local self-governing bodies, in most cases, in India. In view of the very extensive powers of control that the Provincial Governments have in reserve, which they often exercise, it does not appear that there is any justification for the criticism made by the Indian Statutory Commission regarding "the failure to realise the need for control by the Provincial Governments over local self-governing authorities".

BOOK IV

THE INDIA OF THE STATES

CHAPTER THIRTEEN

THE STATES AND HOW THEY ARE GOVERNED

Our constitutional discussions have so far been with reference to British India. The remaining parts of India are under the administration of a number of more or less independent or semi-independent hereditary rulers or princes, each governing his territory under the suzerainty or overlordship of the British Indian Government. These tracts are popularly known as the (Native, or Feudatory, or Protected, or) Indian States. The part of India included in the States may, in the aggregate, be described as the India of the States.

The Indian States are 562 in number. The respective importance of the States may be known by the number of guns fired in each case by way of salute to its ruler. There are some Princes who are entitled to salutes ranging from 13 to 21 guns each. There are others who are entitled to salutes of 11 guns each. These are permanent salutes. Besides these salutes some of the Rulers have been allowed additional salutes in consideration of personal distinction or public service. The rulers of Hyderabad, Kashmir, Baroda, Gwalior, and Mysore are entitled to salutes of 21 guns and these are recognised as the most

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1 There are writers who, of late, have begun to speak of this part of the country as Indian India or the India of the Princes. The term includes at one end of the scale Hyderabad with an area of 82,698 square miles, a population of 14,436,148 persons and a revenue of about 7 crores, and, at the other end, minute holdings in Kathiawar extending over a few acres and enjoying a revenue of less than one hundred rupees annually.

important among the States. Indore, Bhopal, Kolhapur, Travancore, and Udaipur belong to the next class of States, their rulers being each entitled to 19 guns. Bikaner, Jaipur, Jodhpur, Patiala and Rewa are seventeen-guns States. There are altogether 60 States whose rulers are entitled to salutes of 13 to 21 guns and the rulers of 66 States to 11 guns.

The States and Agencies occupy an area of 712,508 square miles, have a population of 81,310,845 persons, and an annual revenue of about 45 crores. These figures when marshalled against the corresponding figures relating to British India make undoubtedly an imposing array. It is found that the proportion of the population of the States to that of British India is as 23 : 77. It has been pointed out that the area occupied by the States is thirteen times the size of England and the population twice that of Great Britain. It is in some of the States, e.g., Mysore and Travancore that remnants of the old Hindu structure of Government may still be found. Some of the finest and most picturesque tracts of India are included in the States. They are estimated to possess very large untapped natural resources and may thus be said to store considerable potential wealth.

While the British Indian provinces are mostly compact and extensive areas with small units such as Delhi Province, Coorg, etc., thrown in between them, the vast majority of the States are very small in size. The larger States though smaller in number hold, however, much the greater portion of the territory under their control. Many of these States possess autonomy with power of internal administration in accordance with the terms of the treaties or agreements entered into by the British Government in India with each of these States.

System of Government

In the States the system of government is of an essentially autocratic character. There is, however, this

difference between the two parts of India that while in British India autocracy is tempered by popular institutions and practices authorised by democratic technique, the States enjoy almost unmitigated autocracy. They are, as the Montagu-Chelmsford Report says, in all stages of development, patriarchal, feudal, or more advanced, while in a few States are found the beginnings of representative institutions. "The characteristic features of all of them, however, including the most advanced are", the Report says, "the personal rule of the Prince and his control over legislation and the administration of justice." The judicial system in the States is mostly framed on the British Indian model and Hindu and Mahomedan laws are administered almost in the same way as in British India. But the jurisdiction over British subjects is reserved to British Courts. In fact, the British Government claims jurisdiction over all Europeans in the States.

"For long they (the Princes) stood upon the ancient ways but they too have been swept by the breath of the modern spirit. Their efforts to improve their administration on the lines generally followed in British India have already in many cases been attended with conspicuous success. Of the 108 Princes in class I, 30 have established legislative councils, most of which are at present of a consultative nature only; 40 have constituted High Courts more or less on British Indian models; 34 have separated executive from judicial functions; 56 have a fixed privy purse; 46 have started a regular graded civil list of officials; and 54 have pension or provident fund schemes. Some of these reforms are still no doubt inchoate or on paper, and some States are still backward, but a sense of responsibility, to their people is spreading among all the States and growing year by year. A new spirit is abroad. Conditions have very largely changed in the last twenty years".[2]

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[2] Report of the *Indian States Committee* (1928-29).

As regards the introduction of representative institutions in the States the following statement by a recent writer who held

Mysore, for instance, is a progressive State having a University of its own; the State is engaged in a well-organised attempt to exploit and develop its economic resources. From the point of view of educational progress, Travancore,[3] Cochin and Baroda possess a splendid record. Not only are they the most advanced among the States, but they are even far ahead of British India, in respect of the education of both men and women.

Although some of them have made rapid progress in certain spheres, the States are generally considered less progressive when compared with British India. In view of the fact, however, that the competitive methods of life have not made inroads in the economic sphere in the States to the same extent as in British India, poverty and the struggle for existence in them appear to be less intense. It is often pointed out in this connection that the standard of living of the people in the States is generally on a lower level than in British India.

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important official position in India will be read with interest: "Any experiment in the form of constitutional government in the States is heralded as a great advance but the Princes have learnt only too well from the British Government how easy it is to institute Legislative Councils and Assemblies which are merely debating societies." G. T. Garratt, I.C.S. (Retd.)—*An Indian Commentary* (1928).

[3] The Maharaja of Travancore in requesting the Viceroy to lay the foundation-stone of the newly constituted Legislature of Travancore, on the 12th December, 1933, observed: "In the Assembly there will be 62 non-official and ten official members, and in the State Council, 27 non-official and ten official members. The Government have resorted to the principle of nomination to a strictly restricted extent for the representation of women and the minorities on the Councils. The majority is thus essentially non-official. Legislation, finance, interpellations on practically all matters of administration, votes on appointments carrying a salary up to Rs. 500, all come within the purview of the Legislature—powers which add to the complete freedom of speech and give the people a big controlling voice in matters affecting the Government. This reform constitutes what I believe is the largest measure of association of the people of an Indian State with its Government and also represents a definite step towards the realisation of the federal idea."

"Period of tutelage and subserviency"

In the earliest stages of the relations of the Indian States with the East India Company the alliances were "on a more or less equal footing". This phase may, however, be said to have come to a close with the Marhatta wars of 1801-3. The fall of the Marhatta power rendered the position of the British in India less precarious. Taking advantage of this favourable situation, the East India Company established a sort of military protectorate over the States, which at this time occupied by far the larger part of India. During the period the British authorities pursued a policy of "non-intervention in all matters beyond its own ring-fence." This policy was superseded by "the policy of subordinate isolation" initiated by Lord Hastings. With the assumption of suzerainty over the States by the British, the foreign relations of the princes as also their relations with other States, were taken up by the British, the States maintaining subsidiary military forces.[4] These forces comprised in 1820 nearly half of the British Indian army.

Lord Dalhousie was the high priest of the new-fangled theory of feudal superiority over the States. The transfer of power from the East India Company to the British Crown after the Indian Mutiny, however, brought about an important change in the relations of the Indian States with the British Government. Some of the more glaring abuses of Lord Dalhousie's policy were at once removed.

[4] The effect and consequences of Lord Hastings' policy has been succinctly described recently by a British Indian administrator. "The British Government refused", he writes, "to shoulder the responsibility of ensuring reasonably good government in the States as an incident of paramountcy. It preferred the less onerous theory of a feudal superiority with its concomitants of wardship, escheat, and the right of confirming succession. Wardship involved the responsibility of regency administration in cases of minority; escheat was an easy method of dealing with inefficient administration on failure of lineal heirs. Escheat involved the repudiation of the Hindu practice of adoption, and gave widespread dissatisfaction among the Princes of India. It was undoubtedly one of the contributing causes of the Mutiny". —Sir William Barton in *Modern India,* 1931 (Oxford University Press)

Queen's Proclamation and the States

In her memorable Proclamation to the Princes and People of India Her Majesty the Queen declared that no further annexation of territory would be allowed and that the measure of internal sovereignty that the Princes possessed in their internal affairs was guaranteed.

"We hereby announce to the Native Princes of India", declared the Proclamation, "that all Treaties and Engagements made with them by or under the authority of the Honourable East India Company are by us accepted and will be scrupulously observed; and we look for the like observance on their part. We desire no extension of Our present territorial possessions; and while We will admit no agression upon our dominions or Our rights to be regarded with impunity, we shall sanction no encroachment on those of others. We shall respect the rights, dignity, and honour of the Native Princes as Our own; and We desire that they, as well as our own subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good government."

It is claimed that the British policy with reference to the States has since the assumption of the Government of India by the Crown been one of union and co-operation on the part of the British Government with the Indian States. This is not the place to discuss whether the claim can be justly maintained in the face of some of the complaints recently expressed by the Princes. It cannot, however, be denied that the British policy in this respect has passed through various vicissitudes. The present position has been summed up in the Montagu Report: "The States are", it says, "guaranteed security from

without ; the paramount power acts for them in relation to foreign powers and other States, and it intervenes when the internal peace of their territories is seriously threatened. On the other hand the States' relations to foreign powers are those of the paramount power ; they share the obligation for the common defence ; and they are under a general responsibility for the good government and welfare of their territories."

The powers of the British Government are exercised through Political Officers. In the larger states a Resident represents the Government; and groups of small states are supervised by an Agent to the Governor-General. All communications between the states and the Government of India, officials of British India, or other Indian states have to pass through these officers.[5]

5 A French writer observed : "The political officers who reside at their courts are in truth (I reproduce here native opinion which contains a material part but only a part of the truth) their masters. This may not be true of the Nizam who has eleven million subjects, nor perhaps in the state of Mysore with its five millions . . . But elsewhere the attitude of the political officer while ordinarily deferential in form is the attitude of a servant who directs his nominal master, haughty, polite, impertinent and ironical . . . And the peoples of the states are not deceived. They know their rulers are thus subject to masters and their attitude takes colour from this."—Chailley : *Problems of British India*, p. 259.

King Edward VII, when visiting India in 1875 as Prince of Wales, in a letter to Queen Victoria wrote : "What struck me most forcibly was the rude and rough manner with which the English Political Officers treat them. It is indeed much to be deplored, and the system is, I am sure, quite wrong."

CHAPTER FOURTEEN

THE POLICY OF ASSOCIATION

During the great war the Indian Princes rendered signal service to the British in various ways. The stirrings of political life in British India along with the events of the war had their repercussions on the people and governments of the Indian States.[1] It was natural, therefore, that when the Montagu reforms were under consideration the integral connection as also the identity of interest of the States with British India should be stressed.

The Montagu-Chelmsford Report envisaged a future when the gradual concentration of the Government of India upon matters common to the British provinces as also to a great extent those in which the States are concerned—such as, defence, tariffs, exchange, opium, salt, railways, and posts and telegraphs,—would make it easier for the States, while retaining the autonomy which they cherished in internal matters, to enter into closer association with the central government if they wished to do so. The Report declared that the British Government had no desire to force the pace; all that they needed or could do was to open the door to the natural development of the future. The Princes should, the authors of the Report said, be assured in the fullest and freeest manner that no constitutional changes that might take place would in any way impair the rights, dignities, and privileges, secured to them by treaties, sanads, and engagements, or by established practice.

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1 Sir Manubhai Mehta claimed at the 2nd session of the Round Table Conference that the federal idea was as old as 1914 when the Maharaja of Bikaner placed an outline scheme of federation with British India before the Viceroy.

The Chamber of Princes

In accordance with the suggestion of the Montagu-Chelmsford Report, that there should be a permanent consultative body, mainly composed of representative princes for the discussion of matters which affected the States generally, or, in which they were commonly concerned, such a body was brought into existence under the name of *Narendra Mandal* or the Chamber of Princes by Royal Proclamation on the 8th February, 1921. The Duke of Connaught performed the ceremony of inauguration of the Chamber, on behalf of the King-Emperor in the *Dewani-i-Am* at Delhi. The Royal Proclamation which was read on the occasion contained the following significant passage: "In my former Proclamation I repeated the assurance, given on many occasions by my Royal Predecessors and myself, of my determination ever to maintain unimpaired the privileges, rights, and dignities of the Princes of India. The Princes may rest assured that this pledge remains inviolate and inviolable".

The inauguration of the Chamber of Princes gave the rulers of States opportunities of "comparing experience, interchanging ideas, and forming mature and balanced conclusions on matters of common interest." The Chamber is not an executive but a deliberative, consultative and advisory body. It meets annually in its own Council House recently erected in New Delhi. The Chamber consists of 108 Princes who are members in their own rights besides twelve other representative members chosen from 127 rulers of other States (which constitute the second division States) by a system of group voting.[2]

2 The two classes of members of the Chamber and the 327 non-member estates and jagirs have furnished a new basis of classification of the States.

The Viceroy is the President of the Chamber. It has a Chancellor and Pro-Chancellor elected from among its members. It has also a Standing Committee consisting of seven members including the Chancellor and the Pro-Chancellor. The Standing Committee advises the Viceroy on matters referred to it by him and proposes for his consideration "other questions affecting Indian States generally or which are of concern either to the States as a whole or to British India and the States in common".

The Chamber is precluded from discussing treaties and internal affairs of individual states, rights and interests, dignities and powers, privileges and prerogatives of individual Princes and Chiefs, their States and the members of their families and the actions of individual rulers. It is further definitely laid down that the institution of the Chamber shall not prejudice in any way the engagements or the relation of any state with the Viceroy or Governor-General (including the right of direct correspondence) nor shall any recommendation of the Chamber in any way prejudice the right or restrict the freedom of action of any State. It has to be noted that some states of the greatest importance *e.g.* Hyderabad, Mysore and some others have not formally joined the Chamber. At the annual session of the Chamber in February, 1929, a resolution was passed, by which the proceedings are no longer confidential and are ordinarily open to the public.

The establishment of the Chamber for all practical purposes abrogates the principle according to which each state had been treated by the British Government in India as an isolated unit. This was a policy which discouraged joint consultation and joint action between the Rulers of States.

Efforts were, of course, made in the past to provide opportunities for consulting the Princes in a group. Lord Lytton, for instance, made a proposal in 1877 to institute a consultative body of eight of the more important among the Princes to be called "Counsellors of the Empire." Lord Lytton's proposal, as also Lord Curzon's later scheme of a Council of Princes was not accepted by the British Government. In 1918, Lord Chelmsford at the instance of the late Mr. E. S. Montagu, when the Secretary of State for India was on a visit to this country in connection

with the proposed constitutional reforms, invited an informal Committee of Princes. They discussed with the Committee matters arising out of the contemplated constitutional changes in British India,—matters in which the States were interested—with the object of safeguarding their interests.

The practice, which has grown up since the war, of inviting Rulers of Indian States, along with British Indian delegates, to represent India at the League of Nations, and at sessions of the Imperial Conference, and lastly at the Round Table Conference, has brought about a definite breach in the old policy of isolating the States, by seeking their co-operation. His Highness the Maharaja of Patiala, for instance, represented the Ruling Princes of India in the Imperial War Cabinet. His Highness the Maharaja of Bikaner attended Cabinet meetings and Peace Conferences, affixing his signature to the Treaty of Versailles. Rulers of Indian States have in a similar manner attended sessions of the Imperial Conference and of the League of Nations.

Constitutional Position

During recent years the constitutional future of India has been the subject-matter of enquiry and discussion by several commissions, committees and conferences ; and the problem of the relationship of British India with the States has often loomed large. The Indian Statutory Commission (1928-30) recommended the establishment of a Council of Greater India, containing both representatives of the States and members representing British India, for the purpose of promoting a closer association of the Indian States with British India in matters of common concern for India as a whole. The Commission suggested that it should be mainly a consultative and deliberative body. They were

also of opinion that "the essential unity of Greater India will one day be expressed in some form of federal association, but that the evolution be slow and cannot be rashly pressed."

The Simon Commission appear to have been very largely influenced by the exceedingly cautious views of the Indian States Committee (1928-29), popularly known as the Butler Committee after its Chairman, Sir Harcourt Butler. Referring to the problem of advance in the direction of federation, the Committee said that "there is need for great caution in dealing with any question of federation at the present time, so passionately are the Princes as a whole attached to the maintenance in its entirety and unimpaired, of their individual sovereignty within their States".

The Government of India in their Despatch on Constitutional Reforms, dated so late as the 20th September, 1930, also observed that a federation of all-India was still a distant ideal. They expressed their approval of the suggestion of the Indian States Committee as supported by the Indian Statutory Commission that the exercise of paramountcy in respect of the States should no longer be a function of the Government of India. "Any invasions or limitations of the autonomy of the States must", the Despatch said, "come not from the Government of British India, but from the representative of the British Crown to whom alone the Princes admit allegiance."

The constitutional position of the States has formed a topic of recent controversy. The issue was raised in a letter dated the 27th March, 1926, from Lord Reading to the Nizam in which the former re-iterated the sovereignty of the British Crown in India. The Crown's supremacy, he claimed, existed independent of treaties and engagements. The varying degrees of internal sovereignty which the rulers enjoyed, he argued, were all subject to the exercise by the paramount power of the responsibility to preserve peace and good order throughout India.

Sir Leslie Scott, who acted as counsel for the Indian Princes before the Indian States Committee, in an article in

the *Law Quarterly Review* (July, 1928) put forward five propositions. Firstly, the fundamental tie between the princes and the Crown was consent ; stcondly, the contdacts are between "sovereigns" ; thirdly, the relationship is in no sense arbitrary but is a "nexus of mutual rights and obligations" ; fourthly, the contracts were made by the princes with the British Crown and nation and could not be assigned to a responsible Indian government ; and lastly, that the Government of India was an agent of the British Crown, and thus the agent's interest can not prevail against the duty of the Crown towards Indian States.

The Butler Committee observed: "Paramountcy must remain paramount . . . On paramountcy and paramountcy alone can the States rely for their preservation through the generations that are to come. Through paramountcy is pushed aside the danger of destruction or annexation". This was an awkward shock to the princes, who had asked for the appointment of the Committee, in view, particularly, of Lord Reading's ominous declaration.

Some of the basic propositions of Sir Leslie were, however, accepted by the Butler Committee. For, among their recommendations were: (*i*) that the princes should not be transferred without their own agreement to a relationship with a new government in British India responsible to an Indian Legislature ; (*ii*) that in future the Viceroy—as distinguished from the Governor-General in Council—should be the agent for the Crown in regard to all dealings with the Indian States ; and (*iii*) that an expert committee, on which the princes are to be repdesented, should be appointed to enquire into the financial relations between the States and British India. A 'fact-finding committee' was accordingly formed, which reported in 1930.

The Nehru Committee, appointed by the All-Parties Conference in their Report (August 1928), criticised the implications underlying Sir Leslie Scott's proposals in a very cogent and well-reasoned chapter on "The Indian States and Foreign Policy." The doctrine of paramountcy has carried with it as corollaries, the right exercised by the Government of India regarding installation of princes on the *gaddis,* administering the states during the minority of the ruler, settling disputes between rulers and their *jagirdars* and interfering in cases of government's misrule. "With any legitimate desire on the part of the Indian princes to get their grievances in these respects remedied, it is possible", states the Nehru Report, "even for democratic India to sympathise . . . . We think, however, that the plain fact ought not be overlooked that the Government of India as a dominion will be as much the King's government, as the present government of India is, and that there is no constitutional objection to the dominion government of India stepping into the shoes of the present Government of India".

The Nehru Committee ably challenged Sir Leslie Scott's propositions; they particularly characterised the second of them as "untenable historically and legally" and the last of them as "putting up an effective barrier against the progress of British India towards Dominion status, now and for ever," and as nothing more than ingenious. Referring to Sir Leslie Scott's theory of personal relationship and personal confidence, and the consequent duty of the paramount power in remaining in India to discharge its obligations, the Committee said: "We have shown that this argument is wholly unsound and we sincerely hope that legal ingenuity will not be allowed to prevail against the larger interests of the

country, and that the patriotism and statesmanship of the Indian princes, aided by the growing patriotism and love of freedom among their subjects, will be concentrated more upon the establishment of practical machinery for the settlement of issues between them and a responsible Commonwealth of India than upon a determination of the theoretical question of legal relationship, which can do them no good and is fraught with mischievous possibilities which can only lead to disaster".

The Nehru Committee proposed that all treaties made between the East India Company and the Indian States and all such subsequent treaties, so far as they are in force at the commencement of the proposed Constitution Act shall be binding on the Commonwealth of India. It shall exercise the same rights in relation to, and discharge the same obligations towards, the Indian States, arising out of treaties, or otherwise, as the Government of India has hitherto exercised and discharged. In any difference between the Commonwealth and any State, the matter may be referred by the Governor-General in Council with the consent of the State to the suggested Supreme Court for decision. The views expressed by the Nehru Committee may be taken to represent the views of the progressive section of the politically minded people of India. The Nehru Committee was the only party which took into consideration the points of view of the people of the States.

BOOK V

THE
CONSTITUTION IN THE MAKING

CHAPTER FIFTEEN

THE CONSTITUTIONAL ISSUE

The new constitution was launched amidst the economic dislocation caused by the war. The political situation in India had already been charged with an electric element. This was so mainly because of a sense of frustration of hopes along with keen disappointment at the turn events in the Punjab had taken.[1] Apart from all this, all sections of politically-minded people in the country "encountered a severe shock from the limitations

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1 It is interesting to recall the fact that Mr. Gandhi had welcomed the Royal Proclamation announcing the assent to the Government of India Act (1919). He said: "The Reforms Act coupled with the Proclamation is an earnest of the intention of the British people to do justice to India, and it ought to remove suspicion on that score. . . . Our duty, therefore, is not to subject the Reforms to carping criticism but to settle down quietly to work so as to make them a success." (*Young India*, Dec. 31, 1919). The Amritsar Congress in 1919 also passed a resolution thanking Mr. Montagu and giving its verdict in favour of working the reforms.

But the course of events beginning with the Rowlatt Bills, the consequent agitation and the arrest of leaders, and the Jallianwallabagh massacre cooled the ardour and shattered the faith of many. The *Khilafat* agitation over the anxiety regarding Turkish affairs and especially over attempts to curtail the temporal powers of the *Khalifa* who was also the Sultan of Turkey, gained great momentum as the Congress adopted it as its own. The special session of the Congress in September 1920, at Calcutta, launched a policy of progressive non-co-operation, in order to secure the redress of the Punjab and Khilafat wrongs and also for the attainment of *Swaraj*. Soon after this at the Nagpur session the Congress accepted as its objective the 'attainment of *Swarajya* by peaceful and legitimate means', within the British Empire if possible, outside if necessary, as Mr. Gandhi interpreted the change.

upon popular control which characterised the Montagu Chelmsford reforms."[2]

By the middle of 1921, the non-co-operation and *Khilafat* agitation of the Congress had assumed large proportions, and Government had recourse to repressive measures. The visit of the Prince of Wales was announced at this juncture. At the instance of Mr. Gandhi, the Congress decided to boycott all functions connected with the Prince's visit, as a mark of resentment against the Indian policy of the British Government. The demonstrations at Bombay, in honour of the Prince, who landed on the 17th November, were marked by riotous disturbances. The political atmosphere had become so complicated, that Lord Reading, soon after, in reply to an address at Calcutta said that he was "puzzled and perplexed."

In order to bring the *impasse* to a close, Pandit Madan Mohan Malaviya started in December, on his own initiative, negotiations between the Congress and the Government. He deputed messengers to Mr. Gandhi, saw Mr. C.R. Das and Maulana Azad in the Calcutta Presidency Jail, and waited at the head of a deputation to the Viceroy to press for the summoning of a round table conference to discuss the constitutional issue. Pandit Malaviya's efforts proved abortive. Lord Reading, though agreeable to the summoning of such a conference, was not prepared to commit his Government to certain conditions insisted upon by Mr. Gandhi.[3]

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2 *India in 1924-25.*

3 The Congress session at Ahmedabad which followed, authorised the launching of mass Civil Disobedience. Later on on February 4, 1922, Mr. Gandhi sent an 'ultimatum' to Lord Reading re-iterating the country's demands and emphasising that under the situation created by the attitude of the Government the 'immediate task before the country' was to "rescue from paralysis freedom of speech, freedom of association and freedom of press." On the rejection of his demands, Mr. Gandhi busied himself with preparations for launching civil disobedience in Bardoli, a taluka in Surat District. At this time occurred the tragic incident at Chauri-Chaura, a village in U. P., where an infuriated mob

The constitutional experiment was thus confronted at its inception by strong forces against its success. Even those who entered the Council, notes an official report, 'did so very largely in isolation' during the first three years of the new constitution. "They thus lacked that intimate touch with the electorate and with organized political opinion which was an essential postulate of the constitutional advance for which the reforms were designed to provide the opportunity. . . They had little faith and less enthusiasm".[4]

The financial stringency, the anomalous position of ministers, the use of the overriding powers by the executive only resulted in increased bitterness of feeling. Moreover, the maladroit handling of the political situation; the indifference to the persistent demand for economy in the administration; the quite inadequate way in which the claim for a more rapid Indianisation of the services,[5] and for real progress in the 'nation building' departments was met; the failure of Government to secure a civilised and more humane treatment for Indian colonists in British Dominions like Australia and South Africa and colonies like Kenya and Fiji—added to the smouldering discontent.

In March, 1922 Mr. Montagu resigned from the Cabinet, and was succeeded by Viscount Peel.[6] This event

violently handled the police. At this the Congress working committee, at a meeting at Bardoli (Feb. 12), adopted a resolution suspending mass civil disobedience.

[4] *India in 1924-25*, p. 51.

[5] The Retrenchment Committee, over which Lord Inchcape presided, reported in March 1923. Government, however, did not accept all of the cautious recommendations of this Committee.

In June 1923, the Lee Commission on the Public Services was appointed.

The Salt tax was certified by the Governor-General in 1923.

[6] The Government of India felt that their views on the Indian demand for the revision of the Treaty of Severs should be made

was received with 'a general feeling of apprehension spread over the country' as it might be the indication of a 'change in the angle of vision of the British Government.' Close upon this, Mr. Gandhi was arrested and sentenced to six years' rigorous imprisonment on a charge of sedition for three articles published in *Young India*.[7]

The constitution was avowedly a transitional one, and a revision after ten years was stipulated in the Act. As early as in September 1921, the Assembly passed a resolution urging an examination and revision of the constitution earlier than in 1929. The Secretary of State, Lord Peel, in a despatch[8] on the subject said that it was too early to contemplate a revision. He pointed out that further progress was possible under the existing constitution, and that neither the merits of the new machinery nor the capabilities of the electorate had been tested.[8] In 1923 also, the Assembly, twice recorded its emphatic opinion urging the necessity of constitutional advance.

After the arrest of Mr. Gandhi, a Committee was appointed by the All-India Congress Committee in June to enquire into the

public before the Near East Conference at Paris. They accordingly sent a telegram regarding the three chief points of that demand; the evacuation of Constantinople, the suzerainty of the Sultan over the Holy Places, and the restoration of Thrace and Smyrna. Mr. Montagu considered that he was authorised by the Cabinet to sanction the publication of that telegram; when it became apparent that this was not so, he resigned.

7 Mr. Gandhi was released on 5th February, 1924 by the Government of Bombay on medical grounds. He had been removed to Sassoon Hospital from Yervada Jail and operated upon for appendicitis by Col. Maddock in January.

8 The despatch was dated November 3, 1922.

Lord Reading in a speech (September 5, 1922) said: "Almost from the first moment of my arrival, I observed that agitation was proceeding with a view to obtaining an immediate or almost immediate extension of the powers given under the new constitution, which had then been but a few months in operation."

feasibility of Civil Disobedience. The report of the Committee was published in October, 1923. Among other things it recommended the capture of Councils with the idea of carrying on a policy of obstruction.[9] The majority at the next session of the Congress at Gaya, over which Mr. C. R. Das presided, was not inclined to council-entry. In 1923, however, Mr. Das and Pandit Motilal Nehru were able to form the Congress-Swaraj Party; and they succeeded in persuading the special Congress at Gaya to permit council-entry.

The Swarajist success at the polls for election to the Councils resulted in bringing about a deadlock in the C. P. Council, 'dislocated the work of the transferred departments in Bengal and brought defeat upon defeat on the Government in the Assembly.' In 1924, the Labour Party came into power in England for a short period. All this combined in giving an impetus to the demand for a revision of the constitution. The Secretary of State, Lord Olivier also expressed his sympathy with the demand for an equiry into the working of the constitution.

In February, 1924, Mr. Rangachariar moved in the Legislative Assembly a resolution recommending an early revision of the Government of India Act with a view to securing for India Dominion status, together with responsible government in the provinces. Pandit Motilal, leader of the Swaraj Party in the Assembly, in pursuance of the agreed programme and plank of the Party, suggested the summoning of a round-table conference to recommend a draft constitution for India. The Congress, he urged, had always believed in the principle of self-determination and had never acknowledged the right of Parliament to

9 The Committee was equally divided on this point. Hakim Ajmal Khan, Pandit Motilal Nehru and Mr. V. J. Patel were for entry into the legislatures, and Dr. M. A. Ansari, and Messrs. K. Iyengar and C. Rajagopalachari against it.

decide on future steps. The amended resolution was adopted by an overwhelming majority. The attitude of the Government on this occasion gave rise to a feeling of deep resentment. Sir Malcolm Hailey promised that there would be an immediate investigation into the complaints against the working of the present constitution. If the enquiry revealed the possibility of advance within the Act, the Government of India, he said, were willing to make recommendations to that effect. On the other hand, if no advance was found possible without amending the constitution, the question of immediate progress must, he added, be regarded as an entirely separate issue upon which Government were in no way committed.

As a political protest against the attitude of the Government of India in relation to constitutional advance, the Assembly threw out the first four heads under the demands for Grants and refused leave to introduce the Finance Bill.

The debate was followed by the appointment of an official committee for the purpose of examining the Government of India Act, and of exploring the possibilities of amendments calculated to lead to improved working of the machinery. The examination led to the appointment of another Committee under the chairmanship of Sir Alexander Muddiman, Home Member. It was entrusted with the task of enquiring into the difficulties arising from, or the defects inherent in, the working of the Government of India Act ; and of investigating the feasibility and desirability of securing remedies for such difficulties and defects, consistent with the structure, policy and purpose of the Act ; either by action taken under the Act and the rules, or by such amendments of the Act as appear necessary to rectify any administrative imperfections.

The majority of the Committee adopted the position that the scope of their terms of reference prevented them from recommending any remedies inconsistent with the structure, policy and purpose of the Act The minority, consisting of Sir Tej Bahadur Sapru, Sir Sivaswami Aiyer, Mr. Jinnah and Dr. Paranjpye held that this restriction did not preclude them from stating, if they so concluded, that remedies within the four corners of the Act would not lead to substantial advance. The minority found that the dyarchical constitution had not only failed, but was incapable of yielding better results in the future. They believed that it had been given a fair trial, and that no minor remedies short of a fundamental remodelling of the Act, would produce any substantial results. They envisaged the only solution of existing difficulties in the suggestion that the constitution should be forthwith put on a permanent as opposed to a transitional basis.

The whole Committee agreed that there were serious defects in the present constitution and in the manner in which it had been worked. The majority of the Committee proceeded to a number of detailed recommendations which would, they held, facilitate the working of the present constitution. The minority had little faith in the efficacy of any such minor modifications. They maintained that it was impossible to secure any satisfactory operation of the Indian constitution until such time as it shall have been revised in the direction of securing responsible government in the Provinces and a measure, at least, of responsibility in the Government of India.

The Swaraj Party eventually succeeded in capturing the Congress and Mr. Gandhi temporarily went to retirement. The Swarajists, moreover, were gradually giving up the attitude of unqualified obstruction; on certain occasions they even sided with the executive for passing Bills which, they considered, were beneficial to the country.

The political situation had, in the meantime, become tense with Hindu-Muslim differences. The attempts at reconciling them

found expression through unity conferences, a fast by Mr. Gandhi and propaganda by publicmen. It was during this period that the notable Bengal Pact of Mr. C. R. Das was drawn up. The Pact laid down a definite proportional representation in the legislature and all offices for the two communities. The Cocanada Congress, however, did not accept the Pact as it was considered to be contrary to the fundamental principles of democracy and nationalism.

The year 1925 witnessed the death of Mr. C. R. Das in June and the emergence of the Responsivists headed by Messrs. Kelkar and Jayakar. Although belonging to the Swaraj Party, the Responsivists announced their intention to take office.[10]

In September, 1925, in an amendment to the resolution moved by Sir Alexander Muddiman recommending the acceptance of the principles underlying the majority report of the Reforms Enquiry Committee, Pandit Motilal Nehru formulated the "National Demand". The National Demand was to the effect that "certain political reforms, practically amounting to the grant of immediate Dominion Status, should be conceded by Parliament, and that a Round Table Conference between representatives of the British Government and representatives of political India should meet to discuss the ways and means of implementing these reforms."[11] The demand, Pandit Motilal said, had been largely toned down to secure the support of the largest number of non-official members. The attitude of the Government as expressed by responsible spokesmen in the central legislature, and indicated in the Viceroy's

10 In C. P., Mr. S. B. Tambe, a Swarajist became a member of the Governor's Council, in October

11 Three years ago Mrs. Besant and Sir T. B. Sapru had started the National Convention and drafted a constitutional scheme known as the Commonwealth of India Bill. Their agitation greatly strengthened the demand for a constitutional change.

inaugural address to the legislature later on, was interpreted as a refusal of even the 'modest enough demand' of the Swarajist leader. Thereupon, in March 1926, the All-India Congress Committee called upon the Swarajist members to withdraw from the several legislatures.

Communal dissensions and division in the ranks of the Swaraj Party resulted in the loss of ground by the party generally in the second election contested by them. The country was thus brought face to face with divided counsels. The Responsivists accepted office; and the Swarajist opposition notwithstanding, the Finance Bill of 1927-28 was passed by the Assembly, and ministers' salaries were voted in Bengal and C. P., the erstwhile strongholds of the Swarajists.

The Indian Statutory Commission

It was on the 8th November, 1927, that Lord Irwin, who had succeeded Lord Reading as Viceroy in April 1926, announced the appointment of the Indian Statutory Commission in the course of a speech before the Indian Legislature.[12] The Viceroy, in explaining why the British Government had decided upon the appointment of an

12 The Commission was charged with "inquiring into the working of the system of government, the growth of education, and the development of representative institutions, in British India, and matters connected therewith, and to what extent it is desirable to establish the principle of responsible government or to extend, modify or restrict the degree of responsible government then existing therein, including the question whether the establishment of second chambers of the local legislatures is or is not desirable."

The Commission was composed of Sir John Simon (Chairman), Viscount Burnham, Lord Strathcona, Hon. Edward Cadogan, Mr. Stephen Walsh, Major Attlee and Colonel Lane Fox. Mr. Walsh resigned and was succeeded by Mr. Vernon Hartshorn.

exclusively Parliamentary Commission observed: "It would be generally agreed that what is required is a Commission which would be unbiassed and competent to present an accurate picture of facts to Parliament, but it must also be a body on whose recommendations Parliament should be found willing to take whatever action a study of these facts may indicate to be appropriate."

The Viceroy and the Governors of the Provinces had invited a number of public men to explain the reasons for the decision. Inspite of all efforts to secure the co-operation of Indians, all shades of political opinion combined in denouncing the constitution of the commission and its procedure and in advocating its rejection. The constitutional issue thus unexpectedly came to the forefront again ; and this had the effect of rallying the various nationalist groups. The gatherings of political organisations, held during the Christmas of 1927, gave vent to the popular resentment. The Indian National Congress at its session held at Madras urged that the Commission should be boycotted "at every stage and every form". It also passed a resolution declaring that the goal of the Indian people was complete national independence.[13] The Jinnah wing of the Muslim League at its session at Calcutta passed a resolution urging the boycott of the Simon Commission along with a resolution recommending Hindu-Muslim unity on the lines of the resolution of the Madras Congress. It, however, accepted the principle of joint electorates on the condition of reservation of seats. Sir Tej Bahadur

13 The resolution "was hastily conceived and thoughtlessly passed", according to Mr. Gandhi. Lala Lajpat Rai observed that it was passed because "many people believed that Dominion Status also meant complete national independence, and that therefore they were not making any radical change in the creed of the Congress."

Sapru presiding over the tenth session of the National Liberal Federation at Bombay said that the Liberal Party must not only reject the Commission but should also repudiate the spirit in which the question of India's further advance had been approached by Parliament.

Soon after his arrival in India, in February 1928, Sir John Simon, Chairman of the Statutory Commission, in a letter to the Viceroy, proposed that the Commission should take the form of a "Joint Free Conference", over which he should preside and which should consist of the seven British Commissioners and a corresponding body of representatives chosen by the Indian Legislature. In reply to a letter from Sir Sankaran Nair, Sir John elucidated the position of Provincial Committees and agreed to consider and appeni the Reports of such Committees to the Main Report to be presented to Parliament.

Political leaders of all-parties, assembled at Delhi for the Assembly session, declared in a manifesto published immediately, that their objections to the Commission as constituted, and the scheme as announced remained unaffected by Sir John's letter. After a two-days' debate the Assembly accepter Lala Lajpat Rai's resolution repudiating the Commission. The Resolution was passed by 68 votes to 62.

The Nehru Report

Between 12th February and 11th March, an All Parties Conference met intermittently at Delhi. Its main object was to consider the drafting of a constitution providing for full responsible government for India, along with a settlement of the Hindu-Muslim question. The Conference reassembled at Bombay in May and appointed a sub-com-

mittee to determine the principles of a constitution for India and to draft a Report thereon. The Report of the sub-committee was published in August. It was signed by Pandit Motilal Nehru, Sir Ali Imam, Sir Tej Bahadur Sapru, Mr. M. S. Aney, Sardar Mangal Singh, and Messrs. Shuaib Qureshi, Subhas Chandra Bose and G. R. Pradhan. Lord Birkenhead, Secretary of State for India (1924-28), at the time of the announcement of the Commission had challenged critics in India to put forward their own suggestions for a constitution and observed that the offer was still open. The Nehru Report was regarded as India's reply to that challenge.

The Nehru Committee accepted the Dominion form of responsible government as the basis of their proposals. It recommended joint electorates, with reservation of seats in certain cases for a period of ten years only, the separation of Sind and Karnataka and the status of a Governor's province to N. W. F. Province and other new provinces. Every adult Indian of either sex was to be entitled to vote. It proposed to confer autonomy on the provinces. All provincial legislation, however, was to be subject to the disallowance by the Governor, Governor-General or His Majesty in Council. It enumerated nineteen fundamental rights, to be incorporated in the constitution Act and recommended that the legislative power of the Commonwealth 'shall be vested in a Parliament which shall consist of the King, a Senate and a House of Representatives'. The Senate was to be elected by the Provincial Councils. Regarding the States the Report laid down that the Commonwealth 'shall exercise the same rights in relation to, and discharge the same obligations towards, the Indian States, arising out of the treaties or otherwise, as the Government of India has exercised and discharged'. The

Nehru Scheme provided for a Supreme Court and wanted a radical restriction of appeals to the Privy Council. It proposed to establish a Committee of Defence under the chairmanship of the Federal Prime Minister. The Civil Services were to be solely controlled by the Commonwealth.

All Parties Conference

The All Parties Conference met at Lucknow in August to consider the Report. The Conference unanimously passed a resolution accepting the goal of Dominion Status as set forth in the Report, "without restricting the liberty of action of those political parties whose goal is complete independence." But the communal aspect of the Report met with some criticism at the hands of Muslims and Sikhs. While the Muslims wanted reservation of seats in even Bengal and the Punjab, where they were in a majority, Dr. Moonje pointed out that the principle of the creation of communal provinces in addition to communal electorates struck at the very heart of Indian national unity.

At Calcutta, the All Parties Conference held its session (Dec. 1928) along with the session of the Congress Mr. Jinnah, as leader of the Muslim delegates, put forward a series of amendments to the resolution approving the Report. In these amendments he claimed one-third of the elected seats in both Houses of the Indian Legislature for Mahomedans, the reservation of seats for Mahomedans in Bengal and the Punjab in the event of adult suffrage being established, the vesting of the provinces with residuary powers, and the immediate separation of Sind. The Sikhs also pressed their claims, and, on their failure to secure the acceptance of their proposals, withdrew from the Con-

vention. The Hindu Mahasabha leaders, on the other hand, emphasised their opposition to any change in the communal settlement as embodied in the Nehru Report.

The Congress Session at Calcutta passed a resolution, which was to be communicated to the Viceroy, that unless the Nehru constitution was accepted by the Government on or before 31st December, 1929, the Congress proposed to revive non-violent non-co-operation.

After protracted efforts Government succeeded in securing for the Statutory Commission the co-operation of most of the councils. By October 1928, when the members of the Commission returned from England, all the provincial Councils, except that of the Central Provinces and the Legislative Assembly, had appointed Committees to work with the Commission. The Central Committee was composed of Sir Sankaran Nair, Sir Arthur Froom and Raja Nawab Ali Khan, members nominated by the Council of State, Sardar Shivdeo Singh Uberoi, also member of the Council of State, nominated by the Governor-General to represent the Sikh Community ; and Sir Hari Singh Gour, Sir Abdulla Suhrawardy, Sir Zulfiqar Ali Khan, Mr. Kikabhai Premchand and Rao Bahadur M. C. Rajah, members of the Legislative Assembly, who were nominated by the Viceroy.

Sir John Simon's Proposals

The Simon Commission proceeded with its work with whatever co-operation it could secure. On the 16th October, 1929, Sir John Simon in a letter to Prime Minister Macdonald proposed that in view of the growing conviction that the Indian constitutional issue could not be solved without taking into account the problem of the

Indian States, he wanted an extension of the terms of reference of the Commission, enabling them to examine the methods by which the future relationship between the Indian States and the British Indian provinces might be adjusted. He further proposed that after the issue of their report 'some sort of conference' should be arranged between His Majesty's Government and representatives of British India and the States. To both of these proposals Mr. Macdonald agreed.

It was about this time that Lord Irwin visited England on a short holiday. His Lordship received from the Home Government authority to announce that the natural goal of India's advance was Dominion Status and that after the publication of the Simon Report a Round Table Conference would be called to seek a common basis on which could be formulated proposals to be placed before Parliament. This announcement of 31st October, 1929, helped to relieve the tense atmosphere for a while. Subsequently, at a conference held in December 1929, between the Viceroy and Congress and Liberal leaders, it was found that Lord Irwin was not in a position to assure that the sole function of the Conference should be to draft a constitution conferring Dominion Status. This decided the attitude of the Lahore Session of the Congress held early in 1930. It reiterated the goal of complete independence. The Congress further declared against participation in the proposed Conference at London and committed itself to a campaign of Civil Disobedience.

The Swarajists were also asked to leave the legislatures forthwith. With the disappearance from the legislature of the representatives of the most influential and organised political party, the legislatures in India lost their former

representative and popular character. Outside the legislatures, beginning with Mr. Gandhi's dramatic march to Dandi, the civil disobedience movement created a difficult situation. Arrests, ordinances and clashes between the civil resisters and the police and military in many places, led, naturally, to the relegation of constitutional issues to the background.

Pandit Madan Mohan Malaviya, who had assumed the leadership of the opposition in the Legislative Assembly resigned early in April 1930, along with several members of the Nationalist party. Two days before his resignation he had walked out with other members of his party 'as a protest against the manner in which the Government of India forced down the throat of an unwilling Assembly the principle of Imperial Preference', in connection with the cotton Tariff Bill.

Mr. V. J. Patel also resigned the Presidentship along with the membership of the Assembly at the end of April as he felt that 'his place was with the people'. In his letter of resignation he complained that "even the Speaker of the popular Assembly is expected to behave and to make it easy for the Bureaucracy to function." Referring to the

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14 In a striking speech Pandit Malaviya protested against Sir George Rainey's interpretation of the Fiscal Convention (see, ante p. 50), and quoted the opinion of the Crewe Committee that where the majority of the non-official members of the Assembly agreed with the Government, the refusal by the Secretary of State to legislation should be confined to matters affecting the safety of India and of paramount importance. He appealed to the President for a ruling on the issues raised. President Patel did not give a ruling on the Convention itself, but suggested that Sir George Rainey, by his statement that he would not accept a free vote of the House, had violated the Convention. Later, before putting the matter to the vote the President desired 'to place on record that any decision that this Assembly might reach on this important question will not be by the free vote of this House.'

boycott of the Assembly by the Congress and the resignation of Pandit Malaviya and his followers, he said that the Assembly had lost its representative character. In a second letter to Lord Irwin, he analysed the political situation during the preceding decade and protested against, what appeared to him, as a change of front by the Government on the constitutional issue.

The Report of the Simon Commission was issued in June, 1930. The Reports of the Provincial Committees were published, followed by the Report of the Indian Central Committee, at the end of 1929. The Simon Report met with vehement criticism from various quarters in India. Even Indian publicmen of moderate views wanted to be assured that the Simon Report shall not form the basis of discussions at the Round Table Conference, a proposition which the Government accepted. Persistent efforts were made in England to include Sir John Simon in the list of British Delegates to the first session of the Conference, but without success.

During the next few months the political situation in India became tenser and tenser. Before the delegates to the Round Table Conference left for London, Sir Tej Bahadur and Mr. Jayakar, with the Viceroy's permission, had made an attempt to bring about a reconciliation between

15 An auxilliary committee of the Indian Statutory Commission was appointed to enquire into the growth of education in India, with Sir Philip Hartog as Chairman, and the following members : Sir Amherst Selby-Bigge, Sir Sultan Ahmed, Sir George Anderson, Raja Narendra Nath and Mrs. Muthulakshmi Reddi. The report of the Committee issued in October 1929, revealed many points of interest. They criticised the whole educational system as wasteful and ineffective, and specially urged the extension of women's education and primary education. The Committee, however, appear to have totally ignored the important fact that the existing educational system and structure was a legacy of pre-reform days.

the Congress and the Government. They met Mr. Gandhi at the Yervada jail and Pandit Motilal Nehru at Naini jail. Mr. Gandhi demanded that the terms of reference of the Conference should include the framing of a constitution to give India "the substance of independence", and that there should be a repeal of the salt tax, prohibition of liquor and a ban on foreign cloth, and an amnesty for political prisoners. As the Congress demand regarding the purpose of the Conference could not be conceded by Government, the negotiations fell through.

APPENDIX I

REPORT OF THE INDIAN CENTRAL COMMITTEE

The Report of the Indian Central Committee was published on the 23rd December, 1929. As the Committee did not desire that the report 'should be published as an annexe to the Report of the Statutory Commission', they requested the Viceroy to "take the necessary steps to forward the report and make it available to the British Parliament."

The Committee demanded an explicit declaration on the part of the British Parliament, that the goal of Indian constitutional reforms was dominion status. They further demanded the immediate grant of provincial autonomy and urged Parliamen to make the Government of India responsible to the legislature, in accordance with their detailed recommendations.

The Committee proposed the transfer of all provincial subjects to popular control, except law and order in Bengal, as suggested by the Government of Bengal. They recommended a second chamber for U. P. for ten years only. They suggested that ministers were not to be removable, except with the vote of two-thirds of the members present, and that their salaries shall be fixed by statute. The Governor was to merely play the part of a constitutional head in relation to his cabinet. In cases of difference between the Governor and his cabinet in matters affecting religion, central subjects or the interests of any other province, the Governor would be entitled to refer the matter for the final decision of the Governor-General.

The Committee proposed to double the electorate immediately and recommended that steps be taken to enfranchise the entire adult population by 1951 at the latest. The official and nominated blocks were to disappear. Except in the case of Europeans for all provinces, Anglo-Indians and depressed classes in Madras, and

Karens and Indians in Burma, separate electorates were to be abolished. For other minorities seats were to be reserved.*

In the centre, all subjects except defence and relations with foreign and Indian States were to be placed in charge of responsible ministers. The Secretary of State's Council was to be abolished, but if it was continued, half of its members were to be recruited from the Central Legislature. The Committee recommended the representation of Indians on the British Parliament, so long as India did not attain dominion status.

They also urged the establishment of a Supreme Court and a Military College. Further, the Committee wanted a declaration of fundamental rights to be embodied in the new Act, and the insertion of a provision for advance without any further statutory enquiry.

APPENDIX II

REPORT OF THE INDIAN STATUTORY COMMISSION

The first volume of the Report of the Indian Statutory Commission contains a "survey" of the Indian position. It was released for publication on the 7th June, 1930. The second volume of the Report, containing the recommendations, was published a fortnight later. The report was unanimous on all fundamental matters.

The Commissioners lay down as a first principle that the new constitution "should as far as possible, contain within itself provision for its own development". Secondly, they emphasise that any constitutional changes now recommended for British India, must have regard to a future development when India as a whole, not merely British India, will take her place among the

* Sir Sankaran Nair, Raja Nawab Ali and Sardar Shivdev Singh in their minute of dissent stood uncompromisingly for abolition of communal electorates. Raja Nawab Ali also objected to the reservation of law and order in Bengal and urged the extension of reforms in the N. W. Frontier Province on the same lines as for the rest of India.

constituent States of the Commonwealth of Nations united under the Crown

British India and Indian States

The Commissioners point out that the economic forces are such that the States and British India "must stand or fall together". They call attention to the effect on the States of the adoption, at the wish of the Central Assembly, of an extended protective tariff. "This body, legislating professedly only for British India, has in effect imposed indirect taxation on the inhabitants of the States". As the States themselves have their own tariff policies, there is, in the opinion of the Commission, a serious possibility that unless provision can be made for the reconciliation of divergent interests, numbers of tariff walls will be perpetuated in an area where fiscal unity is most desirable.

There is the still more fundamental point, the Commission state, that there are few subjects which should form the field of activity of a Central Government in India which do not, in fact, interest also the Indian States. An outstanding example is that of defence. Others are communications and important social matters such as the prevention of the spread of epidemics.

The Commissioners declare that if the principle they have laid down is valid, "it inevitably follows that the ultimate constitution of India must be federal, for it is only in a federal constitution that the units differing so widely in constitution as the provinces and the States can be brought together while retaining internal autonomy". This, they think, is recognised in the Montagu-Chelmsford Report. They also quote the following pronouncement made by the Maharaja of Bikaner to the Legislative Assembly of his State on December 19, 1929: "I look forward to the day, when a United India will be enjoying Dominion Status under the aegis of the King Emperor and the Princes and States will be in the fullest enjoyment of what is their due—as a solid federal body in a position of absolute equality with the federal provinces of British India".

Provincial Boundaries

The present provinces, the Commissioners think, cannot be regarded as "in any way ideal areas for self-government". There-

fore in spite of the difficulties encountered in all attempts to alter boundaries and the administrative and financial complications that might arise, the Commissioners make a definite recommendation for "reviewing, and if possible resettling, the provincial boundaries of India at as early a date as possible".

There is, however, one province, to-day an integral part of British India, which should, the Commissioners think, be "definitely excluded from the new policy". That is Burma.

The Army

The Report says: "The Army in India must be strong enough for its task. We hold that for many years the presence of British troops and British Officers serving in Indian regiments, will be essential. It would be idle to deny that this fact gravely complicates the problem of the introduction of an increasing measure of responsibility into the Central Government, but we believe that the proposals which we put forward for consideration with regard to the status of the Army in India would reconcile the demands of security and of advance".

Governor's Powers

The Commissioners state their opinion that "until the spirit of tolerance is more widespread in India and until there is evidence that minorities are prepared to trust to the sense of justice of the majority", there is, indeed, need for safeguards for minorities; and they consider that "the only practical means of protecting the weaker or less numerous elements in the population is by the retention of an impartial power, residing in the Governor-General and the Governors of the Provinces, to be exercised for this purpose". It is extremely undesirable that the new statute should make different provisions for different provinces, not only because this will lead to jealousy and heart burning, but because such a mode of treatment makes inevitable a repetition of inquiries at close intervals in order to see whether the situation has again changed and what further modifications are called for.

The Report states: "The right method, we are convinced, is to construct a constitutional framework into which all the provinces can fit, but which will leave enough latitude for adjust-

ment to the needs of the individual case, and which will enable the constitutional progress of Provincial Governments to be secured by the healthy method of growth rather than by artificial statutory jumps". As long as dyarchy continues, it is inevitable that the elected members of the Legislature should tend to show an exaggerated hostility to the work of the reserved half of the Government, which they may criticize but cannot control. The Commissioners propose, therefore, that the "rigid division into reserved and transferred subjects should disappear". The Governor should, on the administrative side, be given statutory power to direct that action should be taken otherwise than in accordance with the advice of his Ministry (though subject always to the superintendence, direction and control of the Governor-General) only for certain purposes.

The Commission state : "We are not attempting to settle the draft clause, but we should be disposed to describe these two as matters in which, in the Governor's opinion, he must give such directions :—

(1) In order to prescribe the safety and tranquillity of the province ; or

(2) In order to prevent serious prejudice to one or more sections of the community as compared with other sections.

There are three other purposes for which the Governor should possess overriding powers, namely :—

(3) To secure the due fulfilment of any liability of Government in respect of items of expenditure not subject to the vote of the Legislature.

(4) To secure the carrying out of any order received by the Provincial Government from the Government of India or the Secretary of State.

(5) To carry out any duties which may be statutorily imposed on the Governor personally, such as duties in connection with some service questions and responsibility for backward tracts".

The Commission state that they have become convinced that the bolder course is also the wiser course, and that, while making available the experience and guidance which will be needed, and preserving the safeguards which commonsense dictates, they should provide that the department of Law and Order is to be no exception to the general rule of provincial responsibility.

Provincial Councils

The Commissioners consider that, generally speaking, the size of the present Legislative Councils is too small. It is suggested that an immediate increase in the number of members, in the case of the more important provinces, to a "figure of between 200 and 250 might be sufficient for the present".

After considering the question of second Chambers in the provinces with very special care, the Commission have not found it possible to make a unanimous recommendation one way or the other.

The Federal Legislature

It is proposed that in place of the present Legislative Assembly there should be constituted a new body, which the Commission would call the "Federal Assembly", the members of which would not be directly elected by constituencies of voters, but would be mainly chosen by the Provincial Councils themselves.

The Commission recommend that the number of members in the Federal Assembly should be between 250 and 280. The number recommended is approximately one member per million inhabitants. The Council of State, the Report says, should continue with its existing powers as a body of elected and nominated members chosen in the same proportion as at present.

Provincial Fund

The Commissioners are persuaded that the scheme suggested for the constitution of a Provincial Fund offers the "most satisfactory means of ensuring adequate resources to the provinces without infringing their autonomy".

It is proposed that the legislation necessary for the imposition of taxes assigned to the provinces for the purposes of the Provincial Fund should be passed by the Federal Assembly sitting in a special session.

But it is of the essence of this plan that the proposals for raising additional taxes should emanate from the provinces. The Commissioners, therefore, suggest that there should be an inter-provincial Financial Council which would be summoned by the Finance Member and attended by all the Ministers of Finance of

those units of the British Indian federation which would be entitled to draw on the funds.

The Governor-General and his Cabinet

The Commissioners are of opinion that, "the Governor-General must continue to be not only the representative of the King-Emperor in all formal and ceremonial matters, but the actual and active head of the Government. Indeed, there are cases in which, they think, responsibility should be placed on his shoulders which is at present constitutionally discharged by the Governor-General in Council. The question of future relations with Indian States suggests another instance of the same sort."

One change which the Commission think should now be made is to place upon the Governor-General himself the responsibility of selecting and appointing the members of his cabinet. Under the new plan, the Governor-General would of course remain subject to the superintendence and control of the Secretary of State, but apart from this the choice of colleagues would rest with him in theory as it now usually does in fact.

Though it is impossible, in the judgment of the Commissioners, to provide at this stage as much latitude for change in the central sphere as in the provincial constitution, they propose to provide in the central sphere also opportunities for adjustment, while preserving to Parliament the responsibility which it cannot at present abandon, for future decision.

The Commander-in-Chief

In the opinion of the Commission the Commander-in-Chief should not be a member of the Executive Council and should not sit in the Legislature. "His immensely important and onerous duties", they state, "are better discharged outside it". Questions of defence, so far as they come before the Indian Legislature, should be dealt with by a civilian. The Army Secretary would be available, but on occasions of the first importance the task would appropriately fall upon a new member of the Viceroy's Executive Council whom the Commissioners would describe as the *Leader of the Federal Assembly.*

High Courts

It is proposed that the charges of all High Courts should be put upon central revenues and the administrative control of all High Courts should be exercised by the Government of India and not by the Provincial Governments.

Imperial Control

The proposals made by the Commission for the extension of the field within which responsibility for the Government of British India rests upon elected Indian Legislatures involve a corresponding restriction of the control of Parliament. Apart from his authority over the Governor-General in Council the Secretary of State will exercise no control over Provincial Governments save in so far as he does so in connection with the use of special powers vested in the Governor. The functions and composition of the Council of India should, in the opinion of the Commission, be modified. It is proposed to reduce its size and to provide that the majority of its members should have the qualification of more recent Indian experience than is required at present. The functions contemplated for the Council are to be essentially advisory, but independent powers would continue for (1) the control of service conditions and (2) the control of non-votable Indian expenditure.

APPENDIX III

GOVERNMENT OF INDIA'S DESPATCH

In a Despatch dated September 20, 1930, the Government of India, as a preliminary to the discussions of the Round Table Conference, submitted their views on "the further progress which might now be made towards the development of responsible government in India as an integral part of the British Empire".

The Authority of Parliament

After a brief discussion of "the political forces at work in India, the constitutional demands that are most commonly put

forward, and the strength of opinion on which they rest", the Despatch observes: "The conditions of the problem suggest to us the importance of defining as clearly as possible the purposes which Britain must continue to safeguard in India and making it plain that where those purposes are not concerned India should be free to manage her own affairs. The British Government must satisfy itself on certain essential points, for instance, that the defence of India from external attack, which rests, and for many years must continue to rest, largely on British troops, is fully assured: that relations with foreign states, with the ultimate possibilities of war which they involve, are conducted under its authority; that the conditions of internal security are maintained; that financial obligations are provided for and the requisite financial stability and credit of the country adequately secured; that reasonable treatment is accorded to minorities; and that unfair discrimination is not practised against any section of the community. In our opinion the ultimate control of these matters must in present conditions reside in the British Parliament".

Abolition of Dyarchy

The important proposal of the Statutory Commission for the abolition of dyarchy and the consequent establishment in the provinces of responsible Governments (with no official block) dealing with the whole provincial field including Law and Order, is accepted by the Government of India, with full recognition of the risks inherent in so great a change.

The Government of India accept the recommendations of the Governments of Madras, Bombay, the Punjab, the Central Provinces and Assam, that there should be no second Chambers in those provinces. Similarly they accept the recommendations of the Governments of Bengal, the United Provinces, and Bihar & Orissa that in those provinces there should be a second chamber. With regard to the formation of Provincial Cabinets special attention is given to the suggestion made by the Statutory Commission that the Governor should possess the discretion to appoint official Ministers. It is pointed out in the Despatch that there is a "general consensus of opinion in the replies of the Provincial Governments that an official Minister would be difficult

to maintain in office against the wishes of his colleagues". They think it likely that an official member would seldom be appointed, and that, if appointed, his appointment would rest on general consent." They agree however, with the Commission that the Governor should be free to exercise discretion in the matter.

Separation of Burma

With regard to the proposal for the separation of Burma from India the conclusion of the Government of India is stated as follows :—"Assuming that an equitable financial settlement will be made between the two countries, and that their respective economic interests will be safeguarded by arrangements which we hope may be mutually advantageous, we support in principle the proposal that Burma should now be separated. At the same time, we feel strongly that it is a matter regarding which Indian opinion should have ample opportunity to declare itself and we would not ask His Majesty's Government to come to any definite decision until there has first been full discussion of the whole question at the Round Table Conference."

The Central Government

In the opinion of the Government of India, conditions at the centre "involve an inevitable duality or sharing of power between the Parliament and Indian Legislature". They suggest that the proposals of the Commission are hardly likely to produce the strong Central Government which the Commission desire to see. "Indeed," the Despatch proceeds, "they carry a stage further a process which we consider has already reached the limits of safety. The policy pursued in the past in developing the constitution has been to make successive advances in the Legislature while maintaining a more conservative treatment in the Executive. A stage has now been reached when the appropriate course appears to be to endeavour to bring the development in the Legislature and the Executive into closer coordination . . . . . Responsiveness to the Legislature is difficult to combine with a strict adherence to the principle of responsibility to Parliament over the whole field."

The conclusion of the Government of India is that "it would seem necessary to look to some solution on the lines of a unitary

Government", and it is suggested that such a Government, "while containing a definite official element and not formally responsible to the Indian Legislature, would yet include an appreciable popular element consisting of elected members of the Legislature, who might command sufficient support in that body to afford in normal circumstances the promise of reasonable harmony between the Executive and the Legislature." The proposal of the Statutory Commission that the members of the Governor General's Council should be appointed, not as now by the Crown, but by the Governor-General is welcomed.

The Despatch states that any scheme of Government at the centre will be judged by Indian opinion on the promise it affords of development into full responsibility. In the opinion of the Government of India, the suggested form of unitary Government leads the path open for such development on natural lines, and this, in their view is, perhaps, its main attraction.

Safeguards

The Despatch mentions the purposes which His Majesty's Government must safeguard, *viz.*, defence, foreign relations, internal security, financial obligations, financial stability, protection of minorities and of the rights of services recruited by the Secretary of State, and the prevention of unfair economic and commercial discrimination.*

* In an editorial entitled "First Steps at the Indian Conference", the *Nation and Athenæum* of London (Nov. 22, 1930) wrote: "The publication of the Government of India's Despatch has finally disposed of the idea that either Lord Irwin or the British Government has any intention of giving a lead to the Conference. . . The Despatch itself is a studiously guarded and quite colourless document. It would seem that the Viceroy, in order to carry his Council with him, has had to expunge any definite views on any subject. . . Possibly the object of the Despatch was to complete the shelving of the Simon Report. . . . It is difficult to avoid the suspicion that the assumed unwillingness of the Princes to co-operate was considered a convenient excuse for postponing certain changes which both the Simon Commission and the Government of India hold to be unduly dangerous."

CHAPTER SIXTEEN

THE ROUND TABLE CONFERENCE

In opening the Indian Round Table Conference the King-Emperor significantly spoke of "the quickening and growth in ideals and aspirations of nationhood which defy the customary measurement of time." The conference method had been very much in the air for more than a decade past. After the war both England and India had witnessed great changes and it was not at all too early, when the Prime Minister in his address after his election as Chairman, urged the Conference to "boldly come out and appeal to an intelligent and informed public opinion."[1]

The First Session

The first session of the Conference extended from the

1 Rabindranath Tagore, in a letter to the *Spectator* (Nov. 15, 1930) observed: "The invitation to a Round Table Conference accorded to the representatives of a people who can with perfect impunity be throttled into silence or trampled into a pulp, is in itself a sign of the time undreamt of even half a century ago. . . . The real importance of this Conference is not in the opportunity it may offer of a cooperation with British politicians, but with the soul force of the whole world. We must know that this Conference is going to hold its sittings before the world-tribunal whose approbation it is eager to win." In the same letter the poet wrote that, inspite of all this, he hesitated to doubt the wisdom of Mr.Gandhi's non-participation in view of the persecutions in India. He observed that he was silenced by his own shame to talk of distant ideals, while, he added, citing the incidents at Dacca and at Peshawar, "the mother's tears are flowing in our neighbourbood, and the wretched dumbness of the desolated homes is a burden we find difficult to remove from our hearts."

12th November, 1930 to the 19th January, 1931.[2] Although the inclusion of delegations from the States had brought the probability of a federation to the fore, no indications as to the attitude of the Princes had been available. At the first sitting of the Conference Sir Tej Bahadur Sapru extended an offer to the States to consider entering an all-India Federation which would establish 'a federal government and a federal executive, embracing both the British Indian provinces and the Indian States in one whole, associated for common purposes: but each securing control of their own affairs, the Provinces autonomous and the States sovereign and autonomous.' His Highness the Maharaja of Bikaner declared that the large majority of States would join in such a federation, provided the complete picture was satisfactory.[3] This

2 The list of British delegates to the First Session of the Indian Round Table Conference included eight members of the Labour Ministry including Mr. Macdonald, Mr. Wedgwood Benn and Lord Sankey, four Conservatives including Lord Peel, Sir Samuel Hoare and Lord Zetland and four Liberals including Lord Reading and Lord Lothian. The Indian States Delegation consisted of nine ruling princes including the Maharajas of Bikaner, Nawanagar, Patiala, Alwar and Rewa, the Nawab of Bhupal and the Chief of Sangli, and seven state officials, including Sir Manubhai Mehta, Sir Mirza Ismail, Sir Akbar Hydari, Col. Haksar and Sir Prabhashankar Pattani. The British Indian Delegation was composed of fifty-seven members, notable among whom were Mr. Sastri, Sir Tej Bahadur Sapru, H. H. the Aga Khan, Mr. Jinnah, Mr. Mohamed Ali, Messrs. Chintamani, Jayakar, J. N. Basu, and K. T. Paul, Diwan Bahadur Ramchandra Rao, Sir Muhammad Shafi, Sir Chimanlal Setalvad, Sir Pheroze Sethna, Drs. Moonji, Ambedkar and Shafaat Ahmed Khan, Mrs. Subbarayan, Begum Shah Nawaz, Sir Hubert Carr, and Mr. Fazl-ul-Huq.

3 Mr. Ramsay Macdonald characterized this move in the following words: "The declaration of the Princes has revolutionized the situation . . . has at once not only opened our vision, not only cheered our hearts, not only let us lift up our eyes and see a glowing horizon, but has simplified our duties. The Princes have given a most substantial contribution in opening up the way to a really united federated India". But the declaration was conditional. The Maharaja of Bikaner said: "We cannot come in with

memorable announcement transformed the situation, and even critics of a federation between autonomous provinces and autocratically-governed states, like Mr. Sastri and Mr. Jinnah, agreed to withdraw their opposition to the principle of an Indian federation. With the assurance of an element of conservatism in the government by the participation of the Princes, Lord Reading accepted the proposition of a responsible government at the centre.

In the various sub-committees, however, where details began to be threshed out, it became apparent that 'safeguards' of a very stringent nature were being pressed upon the delegates. Nine sub-committees examined the different aspects of the problem. Lord Sankey was the Chairman of the Federal Structure sub-committee, Mr. A. Henderson of the Provincial and North West Frontier Province sub-committees, Sir William Jowitt of the Franchise and Services sub-committees, Earl Russell of the Burma sub-committee, Mr. J. H. Thomas of the Defence sub-committee and the Prime Minister of the Minorities sub-committee.

The Minority problem proved a great stumbling block as the Muslims suddenly announced that their agreement to responsibility at the centre was conditional upon a satisfactory solution of the communal problem. In the absence of preliminary discussions in India amongst all the important groups of minorities concerned and the uncertain attitude of the British Government, the minorities began to assume a more and more recalcitrant attitude.

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responsibility to Parliament, though we realise the necessity for safeguards and guarantees specially during the transitory period, which is another matter."

The declaration was regarded as too sudden to have been made without previous consultation, and also to have been inspired by the situation presented before the Princes at London. An explanation of the attitude of the States was furnished in a letter to the London *Spectator* (Nov. 15, 1930) by Col. Haksar of the Indian States delegation: "If Federation is to come, and come it must, let Federation come at once. Such is the view of the States. Then they will know where they are . . . . they feel that to-day, not to-morrow, offers the easiest chance for accommodating their interests with those of British India."

4 As Mr. Gandhi said on the communal stalemate at the second session of the R. T. C.: "The causes of failure were

The Conference adjourned to explore the avenues of a communal settlement and to sound public opinion in the country on issues raised.[5] In his farewell speech, Prime Minister Macdonald announced that His Majesty's Government had agreed that with certain safeguards, during a period of transition, "responsibility for the

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inherent in the composition of the Indian delegation. We are almost all not elected representatives of the parties or groups whom we are presumed to represent, we are here by nomination of the Government. Nor are those whose presence was absolutely necessary for an agreed solution to be found here".

[5] The nature of reactions of the Conference discussions on informed public opinion in England may be guarded from the press articles and opinions on the subject. Thus wrote the *Manchester Guardian Weekly* (Nov. 14,) : "For India, as Asia generally, is reborn. . . . . That ancient civilisation which slept for so many centuries has awakened and will no longer meet us except as equal to equal. . . . . You cannot measure the strength of Indian nationalism by the number of Indians in whom it is a coherent emotion, nor even by the manner of its expression. Actually it is one of the greatest forces now at work in the world, and we must make terms with it while we may before it is too late. . . . If we stay in India on our own terms we shall at last be driven out and the country follow in the steps of China. . . . . It would be cowardly to run away now, and even more cowardly to flourish the big stick."

Averting to the danger of serious opposition to the conference proposal developing in India and at home the *Nation and Athenæum* (Nov. 22) wrote : "There is a small but active group of Englishmen determined to wreck any attempts at a settlement, and their most active ally is the utter indifference of most of their countrymen to the whole question. This is why it is so important to enlist the support of men of all shades of opinion. . . . . To some extent it is a struggle between the nineteenth and twentieth century points of view, and it will be found that a large proportion of those who support the "die-hard" view of India are ex-officials who spent most of their service in the East before the War. As no sensible person now accuses the East of being unchanging, these men are perhaps the worst of all guides."

The *Spectator* urged (Nov. 15) that, "India, if she is to remain within the British Commonwealth, must be granted equal status with Great Britain and with the Dominions . . . . In our view, whatever the constitutional lawyers may say, the self-governing India of the future . . . . will have the right to withdraw from the British Empire should it desire to do so."

Government of India should be placed upon Legislatures, Central and Provincial" and that "it will be a primary concern of His Majesty's Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through the new constitution to full responsibility for her own Government."

Mr. Macdonald then referred to the communal tangle and said that "an imposed agreement might make your constitution unworkable". He assured that steps would be taken to enlist the co-operation of those sections of public opinion which had held aloof from the conference. He concluded thus : "Finally, I hope, and I trust, and I pray that by our labours together India will come to possess the only thing which she now lacks to give her the status of a Dominion amongst the British Commonwealth of Nations—what she now lacks for that—the responsibilities and the cares, the burdens and the difficulties, but the pride and the honour of responsible government."

The Indian delegates urged upon the British Government, the need for a reconciliation with the Congress in order to induce a cooler consideration of the issues raised by the discussions at the Round Table Conference. Subsequently Mr. Gandhi was released along with several prominent Congress leaders at the end of January 1931. On the mediation of some of the delegates after their return to India a settlement was reached between Lord Irwin and Mr. Gandhi on the 5th March. The pact was ratified by the session of the Congress at Karachi soon after. A resolution indicating the Fundamental Rights of Indians was passed along with several others reiterating the general attitude of the Congress towards the constitutional issues with a view to the

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6 By July, however, a 'charge-sheet' containing the complaints regarding breaches of the pact were handed over to the Home Secretary in Simla by Mr. Gandhi personally. In August, following long talks between Lord Willingdon, who had become Viceroy in April, and Mr. Gandhi "a second settlement" made it possible for Mr. Gandhi to leave for London. The Government did not agree to the Congress proposal of an Arbitration machinery to supervise the May settlement, but enquires into specific allegations were agreed upon.

attainment of "Purna Swaraj". In the meantime, Mr. Gandhi attempted to bring about a communal settlement; at one time he even threatened not to go to London if a communal settlement could not be arrived at. In consultation with the Nationalist Muslims the Congress adopted a formula at Bombay, agreeing to reservation of seats on a population basis in Federal and Provincial legislatures with the right to minorities to contest additional seats in any province where they were less than 25 per cent., and to the vesting of residuary powers in the provinces. Mr. Gandhi attended the conference as the sole elected representative of the Congress.

The Second Session

The second session of the Round Table Conference[7] opened early in September with high expectations. But the opposition to federation under the lead of the Maharaja of Patiala and the Rulers of Indore and Dholpur, their insistence upon safeguards for the States and upon the exclusion of the subjects of states from any direct representation, made the British Indian delegates very uneasy. Further, the various minorities entered into the notorious "Minorities Pact".

Mr. Gandhi took up the position that there could not be any special seats for any community except the Mahomedans, the Sikhs and the Europeans. As regards the depressed classes he insisted that they were Hindus and he would oppose by all means possible any attempt to segregate them politically. The communal difficulty made it impossible for the Federal Structure Committee to take final decisions. Nor could the nationalist viewpoints regarding financial control, defence, the continued interference from

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7 The list of delegates to the second session was considerably enlarged. Representatives of the smaller states of India were included and the British Indian delegation was re-inforced by the inclusion, besides Mahatma Gandhi, of Mrs. Naidu, Pandit Malaviya, Sir Ali Imam, Mr. A. Rangaswami Iyengar, Maulana Shaukat Ali, Sir Muhammad Iqbal, Sir Purushottamdas Thakurdas, Messrs. G. D. Birla and E. C. Benthall and Dr. S. K. Datta.

England, and the extent of the other safeguards be reconciled with the views of the British Delegation, especially the new Conservative Secretary of State, Sir Samuel Hoare.

The attitude of the Congress representative very naturally evoked the greatest interest at the Conference.[8] But in the meantime, in November, 1931, there was a change of Government in Great Britain. The new National Government was predominantly conservative. Prime Minister Macdonald, however, reassured the conference that the Indian policy of the Government remained unchanged. Further, in his concluding statement on 1st December, he said that if the communities in India were unable to reach a settlement acceptable to all parties on the communal question, His Majesty's Government would devise and apply a provisional scheme. He announced that as recommended by the conference, three committees would be set up, (a) to investigate and advise on the revision of franchise and constituencies, (b) to put to the test of detailed budgetary facts and figures the recommendations of the Federal Finance Sub-Committee, and (c) to explore more fully the specific financial problems arising in connection with certain individual states. It was arranged that a Consultative Committee consisting of some

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8 In the course of a speech in the second plenary meeting (November 30, 1931) Mr. Gandhi spoke as follows: "Call it by any name you like; a rose will smell as sweet by any other name, but it must be the rose of liberty that I want and not the artificial product. . . . . I want to become a partner with the English people; but I want to enjoy precisely the same liberty that your people enjoy, and I want to seek this partnership not merely for the benefit of India, and not merely for mutual benefit; I want to seek this partnership in order that the great weight that is crushing the world to atoms may be lifted from its shoulders."

of the Indian delegates would continue to maintain some touch with the British Government, through the Viceroy.[9]

On his return to India on the 28th December, Mr. Gandhi protested against the ordinances and other repressive measures that had been put in motion and asked for an interview with the Viceroy. Lord Willingdon took the position that the ordinances were not open to discussion and refused the interview sought by Mr. Gandhi. He was arrested on the 4th January 1932, as soon as it became known that the Congress might resume Civil Disobedience.

Since then the 'dual policy' of crushing the Civil Disobedience movement on the one hand, and of pushing on steadily with the work of constitution-making on the other, has been adopted by the Government of India with the approval of the National Government of Great Britain. The special powers conferred on the executive, the series of ordinances that have been promulgated, the restrictions placed on the press and public meetings and the ban placed on the Congress and allied associations have combined to create a most critical situation. The activities of terrorist groups in different parts of India, it cannot at the same time be denied, have strengthened the hands of reactionaries.

The Consultative Committee was brought into being in the middle of January to consider the recommendations of the Franchise, Federal Finance, and Indian States Enquiry Committees, when published, as a preliminary to their consideration by His Majesty's Government. On account of the delay in the issue of the com-

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9 After the Prime Minister's speech, Mr. Gandhi in proposing a vote of thanks observed: "It is somewhat likely—I would say only somewhat likely, because I would like to study your declaration once, twice, thrice and as often as it be necessary, . . . that as far as I am concerned we have come to the parting of the ways. . . . . Sometimes even blood brothers have to go each his own way, but if at the end of their differences, they can say that they bore no malice and that even so they acted as becomes a gentleman, a soldier; if it is possible at the end of the chapter for me to say that of myself and my countrymen, and if it is possible for me to say that of you, Mr. Prime Minister, and of your countrymen, I will say that we parted also well."

munal award of the Prime Minister, its meeting was twice postponed, mainly due to the insistence of the Muslim members.

Meanwhile, a suggestion was made by Dr. Shafaat Ahmed Khan, in a latter to the *Times*, to the effect that the grant of provincial autonomy should be made as a first instalment of the reforms, leaving the question of central responsibility for future decision. This caused very great misgivings. Sir Tej Bahadur, Mr. Sastri and other members immediately entered their protest against such a policy.

An explanatory announcement in regard to the procedure relating to the grant of constitutional reforms was made simultaneously in London and Simla on June 27. It was declared that His Majesty's Government had come to the decision of pdoviding for provincial autonomy and federation in a single bill, but that it was proposed to abandon the third session of the Round Table Conference. Sir Tej Bahadur and Mr. Jayakar immediately issued a protest against the abandonment of the procedure of co-operation and consultation and other implications of the announcement, such as leaving the fundamental problem of federation dependent on the voluntary choice of the units, etc. Later, Mr. Sastri, Sir Tej Bahadur, and Messrs. Jayakar and Joshi refused to serve on the Consultative Committee. At a dinner at the Central Asian Society in July, Sir Samuel Hoare made an explanatory statement. This was not regarded as satisfactory and Liberal delegates met at Bombay again and urged for the continuance of the conference method.

The Communal Award

The long awaited Communal Award of the British Government was issued on August 17th with an explanatory statement by Mr. Macdonald, 'not only as the Prime Minister' but also 'as a friend of India'. He said that the settlement was 'subject to revision by agreement amongst the communities concerned'. He also emphasised that a communal agreement was recognised as an essential preliminary to the framing of the new constitution.

The 'award' does not make any provision for representation in the Legislature at the Centre, since it involves the question of the representation of Indian States, which has not been finally determined. But, provision is to be made in the constitution itself to empower a revision of the electoral arrangement outlined in the Premier's award, 'after ten years with the assent of the communities concerned, for the ascertainment of which suitable means will be devised'.

Separate constituencies are provided for Mahomedans, Sikhs, Indian Christians, Anglo-Indians and Europeans. Qualified voters of the 'Depressed classes', under the arrangement of the award, will vote in general constituency; but a number of seats will be assigned to them which will be filled by election from special constituencies in which only voters belonging to the 'Depressed classes' shall vote. Except in Madras they were not to cover the whole area of a province and for Bengal not less than 10 seats were allotted to them. The 'Depressed classes' constituencies, it was to be provided in the constitution, were to come to an end after 20 years if not earlier. Special women's seats are provided for, but such seats are specifically divided between the various communities.

It has been pointed out, that the largest number of religious communities, classes, and interests for which separate eleitorates have hitherto been formed ascording to the Montagu-Chelmsford reforms, is ten in Madras and less than ten in the other provinces. According to the new "communal" scheme, there are to be in the Provinces eighteen separate electorates of the following descriptions: General male, General female, Muslims male, Muslims female, Europeans, Anglo-Indians male, Anglo-Indians female, Sikhs male, Sikhs female, Indian Christians male, Indian Christians female, Landholders, Commerce and Industry, Mining, Planting, Indian Universities, Depressed Classes, Backward areas, and Labour. All these electorates are not to be constituted in all the provinces, but most of them are to be formed in all provinces.[10]

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10 *Vide, The Modern Review* for September, 1932. The White

The award had a mixed reception. The attitude of the Liberals was reflected in Mr. Sastri's statement on the occasion. He said: "An adverse criticism of the communal award is easy and would from several aspects be deserved, but it ill becomes those who by their failure cast the odious duty on the Government to take up a censorious attitude." The advocates of separate representation like Dr. Ambedkar, Mr. Ghuznavi, the All-India Moslem League, the All-India Moslem Conference, and the Sikh Council of Action asked for more, while keen disapproval of the principle involved in the proposals was reflected in the comments of others. In a statement Rabindranath Tagore, said: "Things have come to such a state that I hate even to complain knowing the determined attitude of our rulers and the helplessness of our situation. We cannot expect fair dealings from a Power which, for

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Paper proposals have amplified many points left for decision in the Premier's award. For a brief criticism of the whole scheme of franchise, see p. .

The *Servant of India* sets forth in clear terms the objections to the procedure employed by the Government in extending the system of separate communal electorates introduced by them. It says: "The difficulty in the way of reaching an agreement has largely been due to the consciousness of one party that they have 'friends in the jury' . . . It has betn said again and again that separate electorates for Muslims were a 'privilege'. The Government of India in their Despatch of 1930 on the Reforms observed that 'the privilege which they now possess cannot and should not be taken away from the Muslim community against their wish'. To give a community a privileged position and promise not to take it away without their consent, and still to hope that it will ever be removed is an optimism for which there is not much warrant. Elimination of privileges has always been due to the pressure of communities other than the privileged one and against its wish. The hope, therefore, that the present Award is a temporary accommodation to a necessary evil and that in course of time it will be replaced by a system more in consonance with requirements of nationalism and of responsible government is without foundation. The wrong done now will persist and become a permanent feature of the Indian polity".

its self-interest, would perpetuate differences amongst our people, regardless of the ultimate consequences, which cannot be good even for itself. It is for our leaders who are experienced in politics to devise means whereby our community can unite and repudiate the special privileges and the present policy of iniquitous separatism, which can only disrupt the basis of our common humanity".

The Yervada Pact

A serious situation was created over the Communal Award, by Mr. Gandhi's resolve to 'fast unto death' as a protest against the separation of the Depressed Classes from the general body of the Hindu community.[11] He had intimated his intention in a letter to Sir Samuel Hoare from prison on March 11. In his letter Mr. Gandhi appealed for joint electorates, especially for all Hindus, and protested against the Government's policy of repression. The Premier and the Secretary of State communicated that the Government decision will stand and on September 20 the fast commenced. Earnest efforts by leaders of the Hindu community resulted in the Yervada Agreement. The Hindu leaders' Conference and the Hindu Mahasabha endorsed the agreement on September 25. The Government accepted the Pact the next day and Mr. Gandhi gave up his fast.

The agreement reserved for the Depressed Classes seats in the Provincial Legislatures as follows: Madras 30; Bombay with Sind 15; Punjab 8; Bihar & Orissa 18; Central Provinces 20; Assam 7; Bengal 30; United Provinces 20; total 148. Election

[11] Mr. M. C. Rajah, the member for the Depressed Classes in the Legislative Assembly on the nomination of the Governor-General, had arrived at an agreement with Dr. Moonje in February, favouring joint electorates with reservation of seats. But the Government did not recognise this Pact.

to these seats was to be by joint electorates subject, however, to the following procedure :

All the members of the Depressed Classes registered in the general electoral roll in a constituency will form an electoral college, which will elect a panel of four candidates belonging to the Depressed Classes for each of such reserved seats, by the method of the single vote; the four persons getting the highest number of votes in such primary election shall be candidates for election by the general electorate. In the Central Legislature, eighteen per cent of the seats allotted to the general electorate for British India in the said legislature shall be reserved for the Depressed Classes. The system of primary election to a panel of candidates for election to the Central and Provincial Legislatures, as hereinbefore mentioned, shall come to an end after the first ten years, unless terminated sooner by mutual agreement between the communities concerned in the settlement.

It was also provided that in every province out of the educational grant, an adequate sum shall be earmarked for providing educational facilities to the members of the Depressed Classes. Whether the real object of Mr. Gandhi's fast has been attained by the Yervada Pact appears to be problematic in view of later criticisms and protests, especially from Bengal and the Punjab. These are based on the argument that the settlement had been made without a proper consultation of the parties concerned, with the result that its terms have not been either equitable or fair to all the provinces.

On September 5, the Viceroy made a fresh announcement in opening the autumn session of the Assembly. He said that the approved policy of the British Government, of the British Parliament and of the British people was the introduction of constititutional reforms on the basis of an All-India Federation, coupled with the widest practicable measure of Responsible Government at the Centre and in the Provinces. The Government had during the summer months been actively engaged in suggesting solutions for further consideration of Lord Sankey's Committee at Home. His Excellency declared that he was

authorised to inform them that His Majesty's Government had decided that it would be necessary to hold further discussions in London, the possibility of which was indicated in the Secretary of State's statement. His Majesty's Government proposed therefore to invite a small body of representatives of the States and British India to meet them in London about the middle of November. The character of the discussion and the stage that had now been reached necessitated a less formal and more expeditious procedure than that adopted during the last two years. This result, His Majesty's Government was convinced, would be best achieved by avoiding any public session and by working upon a fixed agenda.

Lord Willingdon's statement appeared to appease the Liberals generally. Sir Tej Bahadur, however, in the course of a statement complained that the Viceroy had given no indication as to the size of the personnel. He expressed the hope that the men to be selected would be men with a really broad outlook who would not block the way for responsible government at the centre. So far as India was concerned, Sir Tej Bahadur added, it was no use denying the fact that non-co-operation by Congress in the task of constitution-making at the final stage could only tend to add to the difficulties of the situation at the time and in future. In the highest interests of the country it seemed to be necessary that efforts of all parties should be directed to converge towards the common end which could be no other than that of the securing of a constitution giving India real self-government. In order to achieve this end what was necessary at the moment was not justification of the steps taken either by the Government or by the Congress, but reversion of steps so as to make common work possible and to secure the representation of all schools of thought.

The Third Session

The third session of the Round Table Conference was held between the 17th November and the 24th December. The number

of delegates was smaller than before and included some new members.[12] Indian Christians, Women and Labour were not represented at all; and the Sikhs were represented by a judge in the Indian State of Patiala, as the general body of Sikhs had boycotted the Conference as a protest against the communal award. Except for Sarila, none of the Indian States were represented by the Princes in person.

The Conference considered the Lothian, Davidson and Percy Reports, and discussed the special powers of the Governor-General and Governors, Financial and Commercial safeguards, the powers of Indian legislatures *vis a vis* Parliament, the form of States' Instruments of Accession, etc. At the close of the session, Sir Samuel Hoare reviewed the work of the three sessions, but on the matter of a date for the inauguration of the Federation, he could give no idea. Of the many memoranda submitted to the Conference, stressing particular points of views, was a very comprehensive one by Sir Tej Bahadur Sapru and Mr. Jayakar.[13] The memorandum sets forth the considered views of moderate Indian publicmen regarding many issues raised at the Conference, which could not be threshed out or decided on their merits, within the short time at the disposal of the third session.

[12] The British delegation was composed of four new members, viz., Sir John Simon, Lord Irwin, Mr. J. C. C. Davidson and Mr. R. A. Butler, besides the Prime Minister, the Secretary of State, Viscount Sankey, Lord Hailsham, Earls Peel and Winterton, the Marquess of Reading and Lord Lothian. Pandit Nanak Chand, Mr. N. C. Kelkar and Sir N. N. Sircar for the first time attended the Round Table Conference.

[13] Several other memoranda were submitted before this session of the Conference, embodying the views and suggestions of dissentient members. The more important among these were: Mr. N. C. Kelkar, Pandit Nanak Chand and Sardar Tara Singh's joint note on the inequity of the communal award; Mr. Kelkar's note criticising the method and extent of representation of the Indian States on the Legislatures; the two separate notes on Bengal Finances by Sir N. N. Sircar and Mr. A. H. Ghuznavi; and a memorandum signed by eight prominent delegates urging a statutory prohibition of discriminatory legislation, so that 'no one should suffer on account of one's religion, caste, race or colour.'

APPENDIX I

SAPRU-JAYAKAR MEMORANDUM TO THE THIRD SESSION OF THE CONFERENCE

The following are relevant extracts from the Sapru-Jayakar memorandum submitted at the close of the third session of the Round Table Conference :

"We desire to emphasise the need for a speedy establishment of the Federation with responsibility at the Centre. It is our conviction that mere provincial autonomy by itself will not be acceptable to the vast majority of the political classes in India . . . We think that the Federation should be set up and begin to work some time in 1935, if not sooner. We would point out that in the Dominions of Canada, Australia and South Africa the Constitution was inaugurated by a Royal Proclamation, and the Acts of Parliament in the case of each of these Dominions fixed a definite date for the inauguration of the constitution, and we think that the same practice should be followed in the case of India.

"We think that His Majesty's Government should invite the Princes to notify by a certain date in February or March, 1933 their willingness to join the Federation. . . . We think that the Federation can work effectively without insisting that half the Indian States representing about half the population of Indian India, should join the Federation at the start. We see no reason why the entry into the Federation should be blocked, if once some of the bigger States should be ready to join the Federation. . . . If no State should be ready to join the Federation, it would give rise to a new situation and we would in that case assume that British India should be endowed with Central responsibility, and the necessary readjustments in the Constitution should take place.

Financial Safeguards

"We think there should be real financial responsibility placed on the Finance Minister of the future. We cannot but feel that

the nervousness which has been displayed as regards the capacity of Indians to manage their finances and the general attitude of the Legislature is not justified . . . We do recognise that it might be necessary during the period of transition to arm the Governor-General with special power, enabling him to intervene, when and only when the security of the British, or for that matter, of the Indian investor is impaired or sought to be impaired by any action of the Finance Minister. We cannot subscribe to the view which is held in certain quarters that it is necessary to give the Governor-General a general power of intervening for the protection of India's credit and financial stability. . . We are further of opinion that if at all a Financial Adviser has to be appointed for the limited purposes indicated above, the appointment should be made by the Governor-General in consultation with his Ministers, and the Adviser should in no way be connected with any financial or political interests in England or in India. We would further add that the appointment should be provisional, to endure only so long as a clear necessity for the retention of that office is felt and that the advice of the Adviser should be fully available both to the Governor-General and the Federal Government.

Commercial Safeguards

"While we agree to the general principle that discrimination in legislation on purely racial grounds should be avoided, we are not sure that the principles accepted in the report of the Committee which considered that question do not go too far. To take only a few instances, we are clear in our minds that for the future development of Indian industries, many of which are lying fallow or are struggling in an impoverished condition, it is absolutely necessary to leave in the hands of the Central and Provincial Governments enough power to initiate, subsidise and protect industries which can be briefly described as key or infant industries, even if such initiation, subsidy or protection should occasionally look like discrimination. We are equally strong in our view that ample power ought to be left in the hands of the Government, both at the Centre and in the Provinces, to control the evil effects of unfair competition, such as sometimes has been practised in the past by powerful organisations against their weaker rivals.

Defence

"We think that the success of the proposed Constitution will be judged in India very largely by the policy which His Majesty's Government will adopt towards Defence. We are of the opinion that the Statute or the Instrument of Instructions, if the latter is to have a statutory basis, as we think it should have, should recognise the principle laid down in the Report of Thomas Committee that the Defence of India should be to an increasing degree the concern of India, and not of Great Britain alone. We also urge that consistently with this principle and in order to implement the same, a duty should be cast on the Governor-General to take every step to Indianise the Army within the shortest possible period compatible with the safety of the country and the efficiency of the Army.

Governor-General and Governor's Powers

"We next come to the Governor-General and Governor's reserve and special powers. We would here strongly urge that these powers should be so precisely defined as not to conflict with or override the powers of the popular Ministers in regard to matters which will be exclusively within their competence, and that the Governor-General and the Governors shall in respect thereof always act on the advice of the Ministers. We would further urge that even in the field of their special powers and responsibilities, they would consult their Ministers though they would not be bound by their advice.

Fundamental Rights

"We think that in the circumstances of India, there is need for a declaration of fundamental rights and that such a step will tend to allay the apprehensions of minorities and special interests.

The Secretary of State and his Council

"We regret that the question of the future powers of the Secretary of State and the continuance or discontinuance of the India Council was not taken up within the short time at our disposal, though some members were anxious to do so. Our opinion is that there will be no need under the new Constitution

for the India Council and that the powers of the Secretary of State being strictly limited to matters within the reserved Department and the special responsibilities of the Governor-General, should be transferred to the Dominions Office."

APPENDIX II

ROUND TABLE CONFERENCE COMMITTEES

Federal Finance Report

The Federal Finance Committee's Report was released on May 7. The Committee was appointed to estimate the probable financial position of the Federal and Provincial Governments and to subject to the test of figures the classification of revenues, as suggested by a sub-committ on Federal Finance, under the chairmanship of Lord Peel.

The terms of reference to the Committee included enquiry into pre-federation debt, powers of taxation, new sources of revenue, provincial contributions, if such contributions be found necessary, emergency powers of the Federal Government, borrowing powers of the Federal Government, borrowing powers and the division of pension charges. The Committee was entrusted with the duty of advising as to the financial adjustments if any, which should be equitably made between the Federal Government and the Provinces. It was composed of Lord Eustace Percy, Chairman, Sir L. J. Kershaw, Sir A. Hydari, Col. K. N. Haksar, Messrs. F. P. Robinson and V. S. Sundarram.

The Committee's forecast of the future financial position showed that the Federal Government would have a surplus while the Provincial Governments would have deficits. It was of opinion that the assets of the new Government would be sufficient to cover the pre-federation debt. It held that the government of every federal unit should have the right of independent borrowing, after giving a notice to the Federal Government. It found that pro-

vincial contributions would be necessary and might be assessed primarily with reference to the additional sources of the Provincial Governments. Though accepting the principle of making over certain heads of the income-tax to the provinces, the Committee found that, for some time, large portions of it will have to be credited to the Federal Government. The Report contains lists of sources of revenue in regard to which the power of legislation should, it is suggested, rest with the Federal Government, *viz.*, (*a*) sources reserved to the Federation, (*b*) excise duties, and (*c*) taxes leviable for the benefit of the units subject to a right of federal surcharge.

Lothian Report on Franchise

The Committee on the Indian Franchise issued their report on June 3, with Dissenting Minutes submitted by Messrs. Chintamani, Tambe and Bakhale.* The Committee had the benefit of the views and reports of Provincial Committees which had been set up to assist them. The Franchise Committee recommended an extension of the franchise from 5·4 to 27·6 per cent. of the total adult population. In the absence of any decision on the question of communal representation of the Muslims and the Depressed Classes, some of the recommendations were of a tentative character, and the Committee reserved the right of revising their proposals later.

Adult franchise has been ruled out for various reasons set out in the report, while indirect election and group voting have been discarded. The general effect of the recommendations as regards the extension of franchise was to be as follows: In Bengal 16 was the percentage of the proposed total electorate to the total population and 31·6 per cent. was the percentage of the proposed electorate to the adult population. The corresponding percentages in the other provinces were as follows: Bombay, 17·1 and 33·5; Madras 15·5 and 29; the United Provinces, 15·5 and 29·7; the Punjab 11·9 and 24·1; Bihar & Orissa 7·3 and 17·9; the Central

* The Committee also included Sir Ernest Bennett M.P., Mr. R. A. Butler M.P., Marquess of Dufferin, Sir John Kerr, Major J. Milner, Miss Mary Pickford, Dr. Ambedkar, Sir Mohamed Yakub, Khan Bahadur Aziz-ul-Huq, Dewan Bahadur Ramaswami Mudaliyar, Hon. Mr. E. Milner, Mrs. Subbarayan and Sir Sundar Singh Majithia.

Provinces 12·5 and 23·4; the North-West Frontier Province 9·9 and 20·1, making a total of 14·1 and 27·6 respectively for the whole of India. As regards the representation of women in the legislatures, the Committee preferred the method of reserving seats for them in constituencies, urban and rural, of both men and women. As regards organised labour the Committee's proposals were that 8 seats should be reserved for them in Bombay, a similar number in Bengal, 6 in Madras, 4 each in Orissa & Bihar and Assam, 3 each in the United Provinces and the Punjab and 2 in the Central Provinces.

The Committee suggested that every effort should be made in all provinces to bring the Depressed Classes electorates up to the population ratio or as near as possible to 10 per cent of the population strength. The existing system of representation for Commerce and Industries, Landholders and Universities was proposed to be retained. The Committee held that the representation of special interests should not be such as to seriously affect the balance of parties formed by representatives of territorial constituencies and so of the general masses of the people. These representatives, it was said, are to be considered as experts available to the legislatures and not to give any voting strength to individual interests. In regard to the Central Legislature, the Committee recommended that the franchise for the Federal Assembly should be the same as that now in force for the Provincial Councils, supplemented by an educational qualification both for men and women.

Mrs. Subbarayan urged that adult franchise should be experimented upon in large towns. She regretted that the number of women electorates had not been increased still further and objected to communal constituencies for women. The Minute of Dissent, signed by Messrs. Tambe, Chintamani and Bakhale, covered a wide ground and disgreed with the main recommendations made by the Committee as a whole. In regard to adult franchise, the basis of franchise, certain features of the provincial franchise scheme, women's representation, the representation of the depressed classes, of minor communities and of special interests, and the proposed arrangement for the federal legislature, the dissentients made more progressive proposals.

Davidson Report on Financial Relations of States

The Indian States Enquiry Committee was set up to examine the extent to which the existing financial relations of the Indian States with the Government of India and the Crown presented obstacles to the attainment of an ideal system of federal finance. The attainment of such uniformity in the future Indian Federation was hampered by the fact that, on the one hand, numerous States made, or had made in the past, direct contributions of a nature not made by any province of British India; whilst, on the other hand, many of them enjoyed a measure of immunity from the incidence of those very taxes which would be the main sources of federal revenue, or possessed a privileged position in respect of certain important federal subjects such as "Posts and Telegraphs" and "Coinage and Currency". The Report of the Committee was published simultaneously in England and India on July 27, 1932. The Committee did not include any Indian member and it took evidence only from representatives of certain states. The Report was unanimous and was signed by the Right Hon'ble J. C. C. Davidson, Chairman, Sir Reginald Glancy, Deputy Chairman, Lord Hastings, Lord Hutchinson of Montrose, Sir Maurice Gwyer, Sir Charles Stuart-Williams and Mr. J. R. Martin. The Davidson Committee confessed that a uniform distribution of benefits and burdens, either between the States or between States and British India, could not be provided in its report. It recommended not only the remission of cash contributions by the States, but suggested their extinction within 20 years. Regarding customs duties, it laid down that 'each state should be enabled to retain the duties on goods imported through their own ports.' Monetary compensation to certain states was also recommended by the Committee.*

* The *Financial News* of London observes: "What emerges clearly from the whole report is the difficulty that will be felt in many directions in reconciling the quasi-sovereign independence of the States with a really satisfactory system of federal finance."

CHAPTER SEVENTEEN

THE WHITE PAPER

The White Paper was published in March, 1933. The proposals embodied in the White Paper are drawn up with the object of converting the present system of Government in India into 'a responsibly governed Federation of states and Provinces', qualified by certain 'safeguards'[1] during a period of transition. Though not the draft of a Bill, it is framed in the form of a statute. The White Paper is divided into two parts. The *Introduction* explains the exact nature of the proposals and describes their intended effect. The *Proposals* represent the tentative conclusions arrived at by the British Government as the result of the discussions at the three sessions of the Round Table Conference. In cases where the Indian delegates were not able to agree, and in some other cases where Indian members were generally unanimous but the British members did not agree with them, deviations have been made from the resolutions passed at the sessions of the Round Table Conference or at the sub-committees.

1 "It is admitted by the authors of the White Paper that the safeguards proposed in it have been framed 'in the common interests of India and the United Kingdom.' These new words may mean one of two things. They may mean that the two countries have become so inter-twined that what is good for one is good for the other as well. This idea, however, is too idealistic to be true and may be dismissed. The intended meaning, then, is that, while such interests as are safeguarded are common to both countries, none are safeguarded which are exclusively those of India or those of the United Kingdom"—Rt. Hon. V. S. Srinivasa Sastri in *The Servant of India*, March 23, 1933.

The proposed Federation is to consist of the autonomous provinces of British India, 11 in number, including the new provinces of Sind and Orissa, and those Indian States which will join in. The conditions precedent to the setting up of the Federation are:

In the first place, "the Rulers of States representing not less than half the aggregate population of the Indian States and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber shall have executed Instruments of Accession". Secondly, the proposals relating to responsibility for the Finance of the Federation are based on the assumption that "before the first Federal Ministry comes into being, a Reserve Bank, free from political influence, will have been set up by Indian legislation and be already successfully operating. The Bank would be entrusted with the management of currency and exchange". Thirdly, the Federation shall be brought into being by Royal Proclamation, but that the Proclamation shall not be issued until both Houses of Parliament have presented an Address to the Crown with a prayer for its promulgation"

The establishment of the Federation is thus made contingent upon factors which would mean, (*a*) that the balance in favour of conservatism is duly assured by the interposition of the Princes' nominees, (*b*) that the financial dominance of capitalistic interests of England and of India is allowed to continue freed from the influence of 'politicians', and (*c*) that the power of Parliament

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2 The conditions as laid down in the White Paper for starting a Reserve Bank are: (1) restoration of budgetary equilibrium; (2) reduction of the existing short-term debt both in London and in India; (3) accumulation of adequate gold reserve; (4) restoration of India's normal export surplus.

The attitude of the London financial circles towards the management and control of the said Bank, as revealed in the conversations between the Governor of the Bank of England and several delegates to the second session of the Round Table Conference from India has, however, been a rude shock. On that occasion, Mr. Montagu Norman emphasised that London financial circles would not agree to constitutional advance unless they were assured of control over Indian finances.

Along with the third session of the R. T. C., a Committee composed of certain members of the Indian legislature and of the

to intervene, even after all these conditions have been fulfilled, to modify the proposals, if Parliament so desires, is secured.

"It is probable", states the White Paper, "that it will be found convenient or even necessary, that the new Provincial Governments should be brought into being in advance of the changes in the Central Government and the entry of the States". And again: "But the coming into being of the autonomous Provinces will only be the first step towards the complete Federation for which the Constitution Act will provide." In another place it is said: "The Constitution Act, though treating the Federation as a whole, will contain provisions enabling the Provincial Constitutions for which it provides, to be brought into being, if necessary, before the constitution as a whole comes into being."

1. Problem of Federation

It is noteworthy that many important Princes have already indicated their disinclination to accept the federal scheme, while others have expressed their unwillingness to join so long as British India is not granted the substance of responsible Government. The former school is represented by the Maharaja of Patiala and Rewa and several smaller states and the latter by the Nawab of Bhopal and the Maharaja of Bikaner. The States' delegation have generally qualified their assent to the principle of federation by further stipulations, *viz.*, (1) that the Sovereignty and

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British Parliament met together and submitted a report on the Reserve Bank, advocating the principle of a shareholders' bank. A Bill based on the London Committee's recommendations and the Hilton-Young Commission's proposals (1920) was passed in December, 1933. The composition of the London Committee, the principle of a shareholder's bank, and many other provisions of the Bill aroused a good deal of opposition in the Assembly and in the country.

treaty rights should be maintained intact, subject to any voluntary delegation of powers to the federal Government, (2) that the entry of the States to the federation shall be left to the discretion of every individual state, and (3) that the Viceroy as representing the British Crown shall decide all matters affecting the rulers personally or their dynasties.

"We shall know", said the Maharaja of Bikaner, at the first session of the Round Table Conference, "how and when to adjust our system to any changing conditions: but we will do it in our own time and in our own way, free from all external influence". The states will have their own time and their own way, while British India's time and way are to be determined through Parliament's influence.[3]

The Ruler of a State may join the Federation at his own will or not. If he does join, he will do so by an Instrument of Accession through which he will 'transfer to the Crown for the purposes of the Federation his powers and jurisdiction in respect of those matters which he is willing to recognise as federal matters.' States joining the Federation will, according to the proposed scheme, enjoy more than their due share of representation in the Federal Legislature.

[3] As Sir Sivaswamy Aiyer observed at an earlier date: "The princes' love of punctilios in matters of precedence, their unwillingness to recognize anything like an equality among themselves and their dislike of decisions by a majority must all operate to intensify their aversion to any genuine federal constitution on the lines familiar to us in the federal constitutions of the world . . . The princes may perhaps be able to suggest . . . . some form of organic association, and publicists indifferent to the need for accuracy of thought and clearness of language may dub it as an experiment in federalism. It may be federalism in some new-fangled sense, but the people of India should be slow in making up their minds to embark in a novel craft hitherto untried."—*Indian Constitutional Problems*, p. 230.

Further, the proposal of a federation between the British Indian Provinces and the States through their Princes and their nominees, leaving the 813 lakhs of states subjects completely out of the picture cannot but cause very great bitterness and resentment among them; and they constitute about one-fourth of the population of the whole country. A notable feature of the more important among the existing federal constitutions is a declaration laying down in general terms the form of government to be adopted by the States forming part of the Federation. For example, the constitution of the United States of America contains a provision guaranteeing to every State of the Union a republican form of government. Similarly, according to the terms of the Swiss Federal Constitution, the cantons are required to demand from the Federated State its guarantee of their constitutions. This guarantee must be accorded, provided, among other things, they ensure the exercise of political rights according to republican forms, representative or democratic Likewise, the post-war German constitution provided that each state constituting the republic must have a republican constitution. The States should have representative institutions in the interests of their people, as well as in the interests of the country as a whole, in order that a progressive outlook may be assured in the future government of the country.

As the proposals stand at present, the advantages are overwhelmingly in favour of the States. This is proved by a study of the proposals not only in regard to the administrative relations between the Federal Government and the States but also in regard to the financial adjustments. For instance, while Corporation Tax will be entirely Federal, federating States will begin to contribute under this head after ten years. Again, federating States will be exempted from the payment of surcharge on taxes on income which may be in operation at the time when the constitution comes into force, though such surcharges are to be deemed as federal surcharges.

Lest progressive elements in British India demand any essential change in the States, it is proposed that

among the matters which lie within the Governor-General's sphere of 'special responsibility', the protection of the rights of any Indian State, will be one.[4] As Sir Tej Bahadur observed at the close of the third session of the Round Table Conference, the proposals seem to make British India a 'dependency' of the Indian States, in certain directions. Can it be said that the White Paper scheme contains any guarantee to the people of British India that there is no risk of the forces of reaction prevailing in the near future, and of the Federation and its units straying into undemocratic paths?

2. Imperial Authority

The White Paper proposals offer little promise of a relaxation of the authority of the British Parliament over India. The Crown will continue to exercise his powers in the manner as heretofore exercised. The future

[4] "The position created for the future federal government," observes a writer in the *Servant of India* (Febr. 9, 1933), "is so weak in relation to the States that it cannot be said to possess adequate control over state subjects to justify its federal sovereignty. The federal government is made too far dependent upon the good offices of the Governor-General to secure obedience from State administrations and provinces." He emphasises that unless the following reforms are introduced into the constitutional scheme, the so-called federal government in India will be neither federal nor a government: (1) Residuary powers should be vested in the federal government so far as the provinces are concerned; (2) Exclusively federal subjects and concurrent subjects should be the same for the States as for the provinces; (3) Though it may be open to a State to join the federation or not, it should not be possible for it to join in respect of some federal subjects only; (4) Transfer of a subject must entail transfer of ultimate legislative and administrative control of federal government; (5) In the field of concurrent powers central legislation should always override provincial; and (6) In the administration of federal functions and in the exercise of federal powers the federal government should affect State and provincial action directly and not through the Governor-General.

Federal Government of India will not advice the Crown, as is the case in the Dominions. It will be controlled from England through the Secretary of State. The Federal Ministry will, of course, advise the Viceroy and Governor-General. But even such advice will be of a very restricted nature ; and the Viceroy and Governor-General himself will be subordinate to the British Cabinet, through the Secretary of State.

"The Secretary of State in Council of India as a statutory corporation", says the White Paper, "is a conception which is manifestly incompatible alike with Provincial Self-government and with a responsible Federal Covernment". In spite of this declaration, the amount of 'responsibility' in the provinces or in the sphere of federal government has been qualified with numerous restrictions. In the sphere of provincial government for instance, the Secretary of State or the Governor-General will have the right of interference, in matters the determination of which is by law committed to the discretion of the Governor, in questions relating to the administration of Excluded Areas and in subjects in respect of which a special responsibility is by law committed to the Governor. In the federal sphere, subjects falling within the discretion and special responsibility of the Governor-General and his Reserved Departments will be placed under the superintendence of the Secretary of State.

The Secretary of State will still continue to exercise his control over Indian legislation. In the first place, he will be called upon to deal with a Bill that is reserved by the Governor-General for the signification of the King's pleasure. Secondly, any Bill assented to by the Governor-General or Governor will within twelve months be subject to disallowance by His Majesty in Council.

The functions arising out of the Crown's relationship with the Indian States will henceforth be discharged by the Viceroy alone. But, as the Secretary of State will continue to be the constitutional adviser of the Crown, he will exercise his powers of supervision and direction over the Viceroy in these respects.

Advisory Council

The Secretary of State will be empowered to appoint not less than three and not more than six persons, of whom two at least must have held office for at least ten years under the Crown in India, for the purpose of advising him. This Advisory Council will be consulted by the Secretary of State according to his discretion and convenience, except in one important respect. The Secretary of State will be required to seek the approval of the majority of the Council regarding any rule regulating the conditions of Public Services in India.

It is proposed that at the expiration of five years from the commencement of the Constitution Act, a statutory enquiry will be held into the question of future recruitment for those Services, except the Foreign Department and the Ecclesiastical Department. The Governments in India concerned will be associated with this enquiry. The decision, however, will rest with His Majesty's Government, and be subject to the approval of both Houses of Parliament. Appointments to the Ecclesiastical Department and the Indian Foreign and Political Department will thus continue to be made by the Secretary of State.

The question was discussed at considerable length by the Services sub-committee of the first session of the Round Table Conference. It recommended that: "Whatever decision may be reached as to the ratio, the majority of the Sub-committee hold that the recruiting authority in the future should be the Government of India. They should leave to that authority the decision of all questions such as conditions of recruitment, service, emolu-

ments and control. Those who take this view attach importance to complete control over the services being vested in the Central and Provincial Governments."

The White Paper proposals have completely ignored the wishes of the majority of the Services sub-committee. The Federal and Provincial Governments will thus have practically no control over a large number of their own servants. Such an arrangement is subversive of both discipline and efficiency.

3. The Viceroy and the Governor-General

Under the White Paper proposals, the offices of the Viceroy and the Governor-General will be separated, though the functions of the two offices will be exercised by the same person. The Governor-General will be the Executive Head of the Federation ; the Viceroy will exercise the powers of the Crown in relation to the states and other matters outside the scope of the federal constitution.

The powers of the Governor-General will include :

(*a*) Powers over reserved subjects;

(*b*) Powers in relation to matters affecting his "special responsibility";

(*c*) Discretionary powers;

(*d*) Emergency powers :

(i) those relating to Reserved Departments and 'special responsibilities of the Governor-General',

(ii) those relating to transferred subjects,

(*e*) Proclamatory powers;

(*f*) Powers that may by Devolution Rules be assigned to the Governor-General over the discretionary powers of the Provincial Governors, the latter's 'special responsibilities' or over Excluded Areas

(*g*) Other legislative and financial powers;

(h) Exclusive powers regarding the administration of British Beluchistan.

The Governor-General will himself direct and control the administration of certain Departments of State—

namely, Defence, External Affairs and Ecclesiastica Affairs. Defence and External Relations are considered as essential functions of autonomous countries. But in the proposed constitution these functions are to be placed beyond national control.

Apart from his exclusive responsibility for the Reserved Departments, noted above, the Governor-General in administering the government of the Federation will be declared to have a "special responsibility" in respect of

(*a*) the prevention of any grave menace to the peace or tranquillity of India or any part thereof;

(*b*) The safeguarding of the financial stability and credit of the Federation;

(*c*) the safeguarding of the legitimate interest of minorities;

(*d*) the securing to the members of the Public Services any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests;

(*e*) the prevention of commercial discrimination;

(*f*) the protection of the rights of any Indian State;

(*g*) any matter which affects the administration of any Department under the direction and control of the Governor-General.

In all these matters the Governor-General "is to act notwithstanding his Ministers' advice, in such manner as he judges requisite for the due fulfilment of his special responsibility".

There is a third category of subjects in which the Governor-General will not be under any constitutional obligation to seek, or, having sought, to be guided by, ministerial advice. In this range of 'discretionary powers' His Majesty's Government anticipate that the following matters will be included:

(*a*) The power to dissolve, prorogue and summon the Legislature;

(*b*) The power to assent to, or withhold assent from, Bills, or to reserve them for the signification of His Majesty's pleasure;

(*c*) The grant of previous sanction to the introduction of certain classes of legislative measures;

(*d*) The power to summon forthwith a Joint Session of the Legislature in cases of emergency, where postponement till the expiration of the period to be prescribed by the Constitution Act might have serious consequences;

(*e*) The power to take action, notwithstanding an adverse vote in the Legislature;

(*f*) The power to arrest the course of discussion of measures in the Legislature;

(*g*) The power to make rules of legislative business in so far as these are required to provide for the due exercise of his own powers and responsibilities.

The Governor-General will have the power to make and promulgate ordinances, for a period of six months and renew them for a second period, if at any time he is satisfied that the requirements of Reserved Departments, or any of his 'special responsibilities' render it necessary. He will also have the power of making and promulgating ordinances "for the good government of British India," if at a time when the Federal Legislature is not in session his Ministers are satisfied that an emergency exists. But these will cease to operate at the expiry of six weeks from the date of the reassembly of the legislature, if they have not been already disapproved by the legislature at an earlier date. Both kinds of ordinances, while in operation, will have the force and effect of Acts of the Legislature.

The Governor-General will have the power to enact a Bill at his discretion, if after receiving a Message from him relating to it, it is not passed by either Chamber or both of them. Such a measure will be known as a Governor-General's Act and will have the same force and effect as an Act of the Legislature.

In the event of a breakdown of the constitution, the Governor-General or the Governor, as the case may be, will be given plenary authority to assume all powers that he deems necessary for the purpose of carrying on the King's Government.

The Governor-General will act in accordance with an Instrument of Instructions to be issued to him by the King, the draft of which "will be laid before both Houses of Parliament, and opportunity will be provided for each House of Parliament to make to His Majesty representations for an amendment of, or addition to, or omission from, the Instructions."

The Governor-General will make demands for grants and finally authenticate all appropriations. In cases when he will be unable to accept the proposals of his Ministers or the decision of the Legislature, for the proper discharge of his special responsibilities, he will have the power to bring the appropriations into accord with his *own* estimates of the requirements. With regard to the non-votable items of expenditure, which has been estimated to cover more than 80 per cent of the revenues, his interpretations will be considered final. There is a provision for the appointment of a financial adviser to assist the Governor-General in the discharge of his special responsibilities in financial matters. Such an adviser, it is feared, is likely to come into the way of the Finance Minister of the Federation.

Ministers and Counsellors

The power of Federal Ministers will not be co-extensive with the range of the activities of the Federal Government . For the administration of the Departments entrusted to the Governor-General personally and of certain other matters specifically conferred on the Governor-General, the responsibility of the Governor-General will be to the British Parliament. In other matters also the

Governor-General may not accept the advice of his Ministers, if it is considered by him as inconsistent with the fulfilment of any of the purposes for which he will be charged with a 'special responsibility'. The Governor-General will be entitled to appoint, at his discretion, not more than three Counsellors, to assist him in the administration of the Reserved Departments. Such Counsellors will be *ex-officio* members of both Chambers of the Federal Legislature, though without the right to vote.

The Governor-General will be enjoined to appoint persons as Ministers, who will best be in a position collectively to command the confidence of the Legislature. The Ministers are to be appointed in consultation with the person likely to command the largest following in the Legislature, and their salary will not be subject to variation during their term of office.

4. The Federal Legislature

The White Paper lays down that the Federal Legislature will be bicameral, the two Chambers possessing identical powers, except that Money Bills and Votes of Supply will be initiated in the Lower Chamber and that the range of the functions of the Upper Chamber in relation to supply will be less extensive than that of the Lower Chamber.

The Upper Chamber will be known as the Council of State. It will consist of a maximum of 260 seats, of whom 100 will be appointed by the Rulers of the States-members of the Federation. The Governor-General will nominate 10 members. Europeans, Indian Christians and Anglo-Indians will elect 7, 2 and 1 members respectively, that is, 10 in all. Coorg, Ajmer, Delhi and Baluchistan will have one member each, that is, four in all.

The remaining 136 seats will be filled by election by means of the single transferable vote by the members of the Provincial Legislatures.

In British India (excluding Burma) out of the total population of 256,627,138, there are only 66,478,669 Mahomedans. This means that slightly more than one-fourth or much less than one-third of the entire population of British India are Mahomedans. But still they are to have one-third of the British Indian seats. "It is the intention of His Majesty's Government" says the White Paper, "that Muslims should be able to secure one-third of British Indian seats in the Upper House; and if it is considered that the adoption of proportional representation in the manner proposed makes insufficient provision for this end, they are of opinion that modification of the proposals should be made to meet the object in view."

The Lower Chamber, called the Federal Assembly, will consist of a maximum of 375 members, of whom 125 will be appointed by the Rulers of the States-members of the Federation. The remaining 250 members will be representatives of British India. The number will be allocated to the several communities and interests as follows: Depressed Classes, 19 , Sikh, 6 ; Muslim, 82 ; Indian Christian, 8 ; Anglo-Indian, 4 ; European, 8 ; Women (special) 9 ; Commerce and Industry (special), 11 of whom 6 will most probably be Europeans ; Landholders (special), 7 ; Labour (special), 10 ; General (Hindus and others), 105. It is calculated that in the Upper House every 1⅔ million persons will get one seat, and in the the Lower House there will be one seat for a little less than one million people.

In assigning seats to the different Provinces no principle has been consistently followed. Bengal, Bihar, Madras and the United Provinces have been allotted less than the share they are entitled to on the population basis. Bombay and the Punjab however, have each got more than their due share. Lord Sankey seeks

to justify this discrimination. If the population ratio were followed as the sole guiding principle, he says, "it would immediately reduce the Bombay Presidency, a province of great historical and commercial importance, which has for many years enjoyed approximately equal representation in the Central Legislature with the other two presidencies and the United Provinces, to less than half the representation these latter will secure." Lord Sankey urges that "some adjustment will be required in recognition of the commercial importance of the Bombay Presidency and of the general importance in the body politic of the Panjab, which it will be generally conceeded is not strictly commensurate with its population as compared with that of other provinces."

According to the census of 1931, the number of Europeans is only 168,134. But *seven* seats have been allotted to them out of the 150 in the Upper House for British India and *fourteen* seats in the Lower House out of the 250 for British India.

It is proposed that the respective legislative fields of the Centre and of the Provinces will be defined in terms of the subjects which will be scheduled in the Constitution Act. Certain subjects will, however, be recognized as common to both the Centre and the Provinces and in respect of them, both Federal and Provincial Legislatures will enjoy concurrent powers. In the event of a conflict between a Federal Law and a Provincial Law in the concurrent field, the Federal Law will prevail, unless the Provincial Law has been reserved for, and has received the assent of the Governor-General. The Federal Legislature will have no power to repeal or amend a Provincial Law to which the Governor-General has thus assented, save with the prior sanction of the Governor-General.

No list of subjects specifically enumerated as belonging to the proper sphere of either the Central or the Provincial Government can cover the entire range of potential activities appropriate to each. It is proposed, therefore, "to include in the Provincial list a general power to legislate on any matter of a purely local and

private nature in the Province . . .; but in order to provide for the possibility that a subject which is in its inception of a purely local or private character may subsequently become of all India interest, it is proposed to make that power subject to a right of the Governor-General in his discretion to sanction general legislation by the Federal Legislature on the same subject-matter."

Again: "Provision will be made enabling either the Federal Legislature or any Provincial Legislature to make a law with respect to a residual subject, of any, . . . by means of an Act to the introduction of which the previous sanction of the Governor-General, given at his discretion, has been obtained, and to which (in case of a provincial Act) the assent of the Governor-General has been declared."

5. The Provincial Executive

The executive authority in a province will be "exercisable on the King's behalf" by the Governor, and all executive acts will run in the Governor's name. He will be the head of the provincial government and will act in accordance with the Instrument of Instructions to be issued by the King. The salary of the Governor and of his personal and secretarial staff together with their allowances will be excluded from the vote of the legislature.

The Governor will be declared to have a 'special responsibility' in respect of certain special matters. These are:

(*a*) the prevention of any grave menace to the peace or tranquillity of the province or any part thereof;

(*b*) the safeguarding of the legitimate interests of minorities;

(*c*) the securing to the members of the Public Services of any rights provided for them by the Constitution and the safeguarding of their legitimate interests;

(*d*) the prevention of commercial discrimination;

(*e*) the protection of the rights of any Indian state;

(f) the administration of areas declared, in accordance with provisions in that behalf, to be partially excluded areas:

(*g*) securing the execution of orders lawfully issued by the Governor-General.

The Governors of the North-West Frontier Province and of Sind will, in addition, be respectively declared to have a special responsibility in respect of :

(*h*) any matter affecting the Governor's responsibilities as Agent to the Governor-General in the tribal and other trans-border areas; and

(*i*) the administration of the Sukkur Barrage.

The Governor will have the full discretion to reject the advice of a minister, if such advice appears to him to be inconsistent with the fulfilment of his special responsibility in any matter, subject to such directions as he may receive from the Governor-General or the Secretary of State.

The Governor will, besides, be empowered to enact, on his own responsibility, special laws, if he thinks such action is needed to enable him to discharge the 'special responsibilities', imposed on him. Such laws will be called Governor's Acts. The Governor's Acts will have the same force and effect as a measure of the provincial legislature. If in any case the Governor considers that any Bill introduced or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his "special responsibility" for the prevention of any grave menace to the peace or tranquillity of the province, he will have the power to direct that the Bill, clause or amendment shall not be further proceeded with.

As regards finance, the statement of proposals for appropriation of revenues and expenditure to be placed before the legislature, will include additional proposals, if any, whether under votable or non-votable heads, which

the Governor regards as necessary for the fulfilment of his "special responsibility", and these will be shown separately. Besides, certain items such as interest, sinking fund charges and other expenditure relating to the raising and management of loans, expenditure fixed by or under the Constitution Act, etc., though open to discussion, will be excluded from the vote of the legislature.

At the conclusion of the budget proceedings, the Governor will authenticate by his signature all appropriations, and the appropriations so authenticated will be laid before the legislature but will not be open to discussion. The Governor will be empowered to include in the final appropriations any additional amounts which he regards as necessary for the discharge of any of his 'special responsibilities'.

The Governor will further have the power to promulgate ordinances for a period not exceeding six months. Such ordinances may be renewed for a second period not exceeding six months. At any time when the legislature is not in session the Governor will have also the power, with the concurrence of the minister, to promulgate short-term ordinances. Such ordinances will have to be laid before the legislature and will cease to operate at the expiry of six weeks from the date of the reassembly of the legislature. In cases in which the legislature (both Chambers, where two Chambers exist) disapproved such ordinances by resolution, these will cease to operate forthwith.

Any area within a province may be declared to be an 'Excluded Area' or a 'partially Excluded Area' by Order-in-Council as directed by His Majesty. It has already been stated that the Governor will be declared to have a special responsibility with reference to a 'partially Excluded Area.' The administration of an 'Excluded Area' will be under the direction and control of the Governor. It will rest entirely in the discretion of the Governor, whether an Excluded Area or a Partially Excluded Area

should be precluded wholly or partially from the operation of any Act or Acts of the Federal or the Provincial legislature. The Governor will be empowered to administer such areas by Regulations, amending or repealing any Federal or Provincial Act or Acts, applicable to such areas, subject to the approval of the Governor-General. Any discussion in the provincial legislature of, or the asking of questions on, any matter arising out of the administration of an Excluded Area will not be allowed. The Governor will have, moreover, the discretion to disallow any resolution or question regarding the administration of a Partially Excluded Area.

The procedure and conduct of business in the provincial Legislature will be regulated by rules to be made by the Legislature. The Governor will, however, have the discretion to make rules regulating the procedure and the conduct of business in the Legislature in relation to matters arising out of or affecting his special responsibilities. In making such rules the Governor will, of course, consult the President or Speaker, as the case may be, but in the event of a conflict between the Governor's rule and any rule of the legislature, the former will prevail.

The Governor, moreover, is given summary powers to suspend the Constitution, if and when, he is satisfied that it is not possible for the government of the province to be carried on in accordance with the provisions of the Constitution Act. He is authorized, in such cases, to assume to himself, by proclamation such powers as may appear to him necessary for carrying on the government of the province effectively. Such proclamation will cease to operate at the expiry or six months. But it will have to be laid before the British Parliament, which may by Resolution prolong the period of suspension beyond six months.

In the case of the Dominions, as Prof. A. B. Keith points out, although there are certain limitations to the powers of the

Governors conferred expressly or impliedly, corresponding with the fact that the Dominions are not independent states, "the position of the Governor towards his ministers is closely analogous to that of the King on which it is based." He adds: "The Governor has no right to issue orders of any sort to them (the ministers); without their advice he is powerless to act, and has merely by constitutional usage a very limited sphere of powers to refuse their advice, if he is prepared to fill their places, should they resign in consequence of his refusal, by other ministers. His ministers are often satisfied if his functions are reduced to those of a 'rubber stamp,' and his connection with the political side of Government becomes purely formal."

The Provincial Ministry

"The Ministers", says the White Paper, "will be chosen and summoned by the Governor and will hold office during his pleasure". The Governor will, however, be enjoined to use his best endeavours to select his ministers in consultation with the person likely to command the largest following in the Legislature. The salary of ministers and their number will be regulated by the Provincial legislature, but the salary of a minister will not be subject to variation during his term of office. The Governor will be entitled to attend and preside at meetings of his Council of Ministers.

6. Provincial Legislatures

The Provincial Legislature will be substantially enlarged. It will in all cases be elected, and no officials will be eligible for election. As it has been already noted, ultimate authority regarding legislation is retained in the Federation to secure the proper administration of federal subjects. The sources of revenue are also divided according as the powers of legislation and allocation of revenue are exclusively federal or exclusively

provincial, or is divided between the Federation and the units.

In Bengal, the United Provinces and Bihar, the legislature will be bi-cameral. The Upper Chamber will be called the Provincial Council and the Lower Chamber the Legislative Assembly. Provision is made whereby an Upper Chamber may be abolished or created where it does not exist, after ten years. The term of a Legislative Assembly will be for five years and of the Council for seven years, unless sooner dissolved. The composition of the Provincial Legislative Assemblies is detailed in the attached chart. Where the Legislature is bi-cameral, a member of the Council of Ministers will have the right to speak, but not to vote, in the Chamber of which he is not a member.

The Legislative Councils (Upper Chambers) in the Provinces of Bengal, United Provinces and Bihar, will be constituted as follows:—

Bengal—Total seats—65; 10 nominated by the Governor in his discretion; 27 elected by method of the single transferable vote by the members of the Bengal Legislative Assembly; 17 directly elected from constituencies for which only Muslim voters will be qualified; 1 directly elected from constituencies for which only European voters will be qualified; 12 directly elected from general constituencies in which all qualified voters other than Muslims and Europeans will be entitled to vote.

The United Provinces—Total seats 60; 9 nominated by the Governor in his discretion; 17 directly elected from constituencies for which only Muslim voters will be qualified; 34 directly elected from general constituencies

for which all qualified voters other than Muslims will be entitled to vote.

Bihar—Total seats—30 ; 5 nominated by the Governor in his discretion ; 12 elected by method of the single transferable vote by the members of the Bihar Legislative Assembly ; 4 directly elected from constituencies for which only Muslim voters will be qualified ; 9 directly elected from general constituencies for which all qualified voters other than Muslims will be entitled to vote.

Serving officials will not be eligible for nomination.

7. Franchise

The White Paper franchise scheme is based on the Lothian Report, the Communal Award and the Poona Pact. Property has been accepted as the basis of franchise, with a tincture of educational qualification. Both these qualifications would differ in relation to different communities, in order to maintain their respective proportional strength. Adequate heed has not been given either to the consensus of progressive opinion against the continuance of property as a predominant factor in the scheme of franchise, or the supreme need of an early adoption of adult franchise as a *sine qua non* of popular government.

For the lower house of the federal legislature the present provincial franchise, with some modifications in the case of Bihar, Orissa and the Central Provinces will be adopted. The present ratio of women to male electors will remain unchanged. The Franchise proposals are expected to enfranchise seven to eight millions of people i.e., a population of 2 to 3 per cent for the whole of British India.

The details of franchise qualifications will vary from province to province. It is proposed to enfranchise, as in the typical case

of Bengal, 15 p.c. of the total population and 29 p.c. of the adult population. The ratio of men to women enfranchised will be approximately 7 : 1, as compared with the Lothian proposals which would have brought it up to 4 : 1. Almost half the male population is thus expected to be enfranchised.

Electors are to be of 21 years of age; and the minimum age of members of the Federal and Provincial Assemblies shall be 25 years, and of the Council of State and Provincial Councils, 30 years. In the electoral roll approximately 10 per cent. of the so-called "depressed class" population for the Provincial Assembly and 2 per cent. for the Federal Assembly shall be included, except in provinces where their number is negligible.

Messrs. Tambe, Chintamani and Bakhale in their minute of dissent to the Lothian Report suggested that a "statutory provision should be made for an increase of the electote after every ten years, so as to lead to adult franchise throughout the country in a period not exceeding thirty years." They also recommended the introduction of adult franchise in all cities with a population of one lakh or more. The number of such cities is not more than thirty in the whole country. None of these very moderate proposals find support in the White Paper.

The Communal Award of His Majesty's Government made through the Prime Minister is itself open to serious objections. Mr. Kelkar, Pandit Nanak Chand and Sardar Tara Singh in a memorandum submitted to the third session of the Round Table Conference, on behalf of the Hindu and Sikh Communities, condemned it on the following main grounds :

(*i*) It concedes special electorates "not only to Mahomedans who demanded them, but also to Anglo-Indians, Indian Christians and even Indian women, who never asked for them."

(*ii*) It assures majorities in the legislatures to the

majority communities on a communal basis and reinforces the system of special electorates for Depressed classes and Indian Christians,—proposals unacceptable even to the Simon Commission.

(*ii*) Hindu minorities in Bengal and the Punjab do not receive representation on a population basis, which has been accorded to the Muslim minorities elsewhere.

(*iv*) It would make it "impossible for the legislature in any province effectively to control the Executive Administration, because of group rivalries."

While the Lothian Report recommended for commerce and industry 8 seats, the White Paper has increased the number to 11, of which a majority is likely to be allotted to Europeans. Commerce and industry would thus secure more than adequate representation on the Federal Assembly.

Labour has been allotted 10 seats only as against 11 for commerce and industry. This number has been fixed in spite of the demand of the labour organizations for 10 per cent. *i.e.*, 25 seats and the definite recommendation of the Lothian Committee in favour of equality of representation of labour with commerce and industry. Further, the distribution of labour seats will be on provincial and not on industrial basis as suggested by the Lothian Committee. The Trade Unions were suggested as constituencies for labour by the Lothian Committee. The White Paper, however, declares that "it is most likely that in most provinces the labour constituencies will be partly trade union and partly special constituencies."

8. Federal Judiciary

The White Paper proposes the establishment of a Federal Court. The Federal Court should have both an original and an appellate jurisdiction. Its original jurisdiction will be to determine justiciable disputes between the Federation and any Federal unit, or between any two or

more Federal units, involving the interpretation of the Constitution Act or any rights or obligations arising thereunder. Its appellate jurisdiction will extend to the determination of appeals from any High Court or State Court on questions, between whosoever they may arise, involving the interpretation of the Constitution Act or any rights or obligations arising thereunder. In order to guard against frivolous or vexatious appeals, it is proposed that, unless the value of the subject-matter in dispute exceeds a specified sum, an appeal to the Privy Council will only lie with the leave of the Federal Court or of the High Court or the State Court concerned.

It is proposed that an appeal shall lie without leave to the Judicial Committee of the Privy Council from a decision of the Federal Court in any matter involving the interpretation of the Constitution, and in any other case only by leave of the Federal Court, unless His Majesty in Council grants special leave to appeal. From the Supreme Courts of the Dominion of Canada and the Commonwealth of Australia, however, appeals lie to the Privy Council only by special leave, and in the case of the Commonwealth appeals are in certain instances prohibited save by permission of the Court itself.

Sir Samuel Hoare circulated a note on the Federal and Supreme Courts, while giving his evidence before the Joint Select Committee. In this note he proposed that in modification of the White Paper proposals, the appellate jurisdiction of the Federal Court might be extended so as to include cases involving the interpretation of Federal laws, excluding concurrent laws for the present. He also suggested that the idea of having a separate Supreme Court might be abandoned, and provision might be made, enabling the Legislature, if and when it was thought desirable, to extend the jusirdiction of the Federal Court. This would, he added, preclude the possibility of empowering the Federal Court to entertain criminal appeals from British Indian

High Courts. Sir Samuel in his note took some pains to reply to possible objections to the proposal and finally observed that the dignity of the Court would be enhanced by making it the one final Court of Appeal, subject always to the right of appeal to the Privy Council. In the cross-examination on this note, Mr. Jayakar tried to bring out that as the Federal Court would, in certain events, take the place of the Privy Council, its jurisdiction must be made co-extensive with the latter.

9. Financial Safeguards

The most important of the financial 'safeguards' is the establishment of a Reserve Bank, under specified conditions, as a pre-requisite to Federation. A second provision is for the creation of a Statutory Railway Board "so composed and with such powers as will ensure that it is in a position to perform its duties upon business principles and without being subject to political interference". Four-fifths of the Federal Government's expenditure and a considerable part of the Provincial Government's expenditure is made non-votable by the Legislatures concerned. These heads include the Defence expenditure, salaries and pensions of members of the higher services, expenditure required for Excluded Areas and British Beluchistan, and prescribed subventions to certain Governors' Provinces (e.g. Sind, Orissa, Assam and Bihar). The power of authentication and restoration of grants is placed in the hands of the Governor-General and of the Governors, even over the transferred field. Further, the maintenance of 'financial stability and credit of India' is included among the special responsibilities of the Governor-General. This power, according to Sir Tej Bahadur, is so elastic, indefinite and absolute that it will be impossible to avoid its abuse. Lastly, the Financial

Adviser to the Governor-General will be there to scrutinise the activities of the Finance Minister of the Federation.

10. Commercial Discrimination

The question of commercial discrimination and financial safeguards was among the subjects discussed at the sessions of the Round Table Conference. The discussion raised controversial issues, and the decisions ultimately reached by the British Government appear to be entirely in disregard of Indian public opinion. British businessmen, trading with India or carrying business in India, demanded the inclusion of statutory safeguards in the proposed constitution against any future legislative or administrative measure, which though intended to promote the interests of the nationals of India, might injure the interests of the former.

The claim for 'equality of trading rights' has been condemned by all shades of Indian public opinion. From the constitutional standpoint the proposals involve a serious restriction on the powers and sovereignty of the Federal Legislature. From the economic point of view, it would mean the perpetuation of the privileged position of non-nationals in India.

Mahatma Gandhi significantly observed that the talk of equality of rights between the Britishers and the Indians is as preposterous as that between a giant and a dwarf. He made it clear that "to talk of no discrimination between Indian interests and English and European is to perpetuate Indian helotage". Sir Pheroze Sethna also remarked in his speech at the second session, that it was not so much a matter of discrimination as of equlization. "Essentially, the question is not one of discrimination but of safeguarding of national interests; and if some kind of differentiation between nationals and non-nationals is needed for economic development, the interests of India and India alone must be the supreme consideration".

At the second session of the R. T. C., in reply to a question by Sir Purushottamdas Thakurdas, enquiring whether the term 'subject' referred only to companies and corporations registered in India, Lord Sankey expressed his agreement. After a lapse of about six months, however, the Lord Chancellor disavowed his former interpretation.

Mr. Rangaswami Iyengar pointed out in a speech at the second session of the Conference, that no colony had ever acknowledged such an injunction restraining for ever the Legislature from endeavouring to regulate not only the existing and accruing rights but also the expectations in investments by business connections of concerns instituted in India even when national interests demanded it. Nor was such a safeguard made a condition precedent to the grant of Dominion status in any component part of the British Commonwealth. Mr. Srinivasa Sastri very appropriately described the provisions regarding commercial discrimination, as 'a disability or discrimination' between India and the Dominions.

The Secretary of State submitted a 'Confidential Memorandum' on Discrimination, while tendering his evidence before the Joint Select Committee. Therein he outlines the principles underlying the proposals and detailing the special provisions for companies incorporated in the United Kingdom but trading in India, for companies incorporated in India, and for ships and shipping. The memorandum also deals with the case of the 'reservation' of Bills which, though not discriminatory in form, are, in fact, discriminatory'. Sir Samuel Hoare, while replying to the cross-examination on this issue referred to the conditions laid down in the External Capital Committee's Report (1925) and said that the present proposals would embrace all existing British companies trading in India but not new ones, when special privileges are intended to be offered to Indian enterprises by the legislatures. Sir Phiroze Sethna in the course of a vigorous cross-examination pointed out that the 'special provision regarding ships and shipping' had never been discussed in any of the sessions of the Round Table Conference. He also elicited the information that

provision will be made for the automatic registration of British ships on the Indian register, thereby depriving India of the advantage of having a separate register and a distinct Mercantile Marine.

11. Burma

Proposals to separate Burma from India have of late been advocated from time to time. At the first session of the R. T. C., the Burma sub-committee, inspite of protests by Mr. Chintamani and Mr. Shiva Rao, asked His Majesty's Government to announce that the principle of separation had been accepted, and that the prospects of constitutional advance towards responsible government held out to Burma, would not be prejudiced by separation. The whole committee of the R. T. C., merely noted the conclusion but did not accept it.

A Burma Round Table Conference was convened in November 1931, to discuss the lines of a constitution for a separated Burma. The composition of the Conference was criticised as being overwhelmingly weighted in favour of separation. At the close of the Conference, in January 1932, the Prime Minister announced that in the event of Burma electing to pursue her political development apart from India, responsibility will be placed upon a bi-cameral legislature for the administration not only of subjects which will fall within the range of Provincial Governments in India, but also of subjects which will be administered there by the Central authority. The general election in Burma, held in November 1932, returned 31 members favouring separation, 14 opposed to it and 5 neutral. The new Council passed a resolution without a division opposing the separation of Burma from India on the basis of the constitution outlined in the Prime Minister's statement.

As the Burma Council did not unreservedly give its opinion in favour of permanent federation with India, another Burma Round Table Conference was called at London at the end of 1933. The anti-separationist members joined the conference under protest, as they said that even though in a majority in the Council and in the country, they formed a minority of the delegates. Sir Samuel Hoare outlined the details of the constitutional proposals regarding Burma before the Conference. The limitations in Sir Samuel's scheme and the question of Burma's status formed the main subjects of criticism by delegates of all schools. The financial position of Burma especially in relation to India was another controversial issue. Subject to the acceptance of the fundamentals of the proposed constitution by the people of Burma, and equitable financial arrangements with India, the principle of separation appears to have been adopted by the British Government.

12. Fundamental Rights

The White Paper states that there are 'serious objections to giving statutory expression to any large range of declarations', but certain provisions e.g., respect due to personal liberty and rights of property and the eligibility of all for public office, regardless of differences of caste, religion, etc., can appropriately find a place in the Constitution Act. It suggests that on the occasion of the inauguration of the new Constitution, some others may find a place in His Majesty's proclamation.

The inclusion of a list of Fundamental Rights had been pressed by Indian publicists in the press and on the platform in India, and at every session of the Conference. Dewan Bahadur Ramachandra Rao submitted a well-written memorandum on this subject at the first session of

the R. T. C. He invited pointed attention to the inclusion of analogous provisions in the constitutions of U. S. A. and Switzerland and the new states of Europe. Sir Mirza Ismail also admitted the desirability of including such a provision in the Constitution Act. In order to safeguard the rights of the citizen in British India as also in the Indian States, especially in view of recent circumstances, a statutory recognition of the fundamental rights would ensure confidence in the Constitution.

The proposals embodied in the White Paper have evoked widespread bitterness and resentment in India. This is due to the retrograde nature of many of the provisions of the proposed scheme. Nor could it be otherwise, as it was felt that the constitution had been so framed that it would be very difficult for the progressive and enlightened sections to acquire adequate strength and secure effective power. In England also, the inherent defects of the scheme appear to have been acknowledged by progressive opinion. Thus writes the *New Statesman and Nation* on the publication of the White Paper: "Nothing could be less inspiring than the bald announcement of this event in the official White Paper. It is a typical production of the India Office written by people ignorant of India and out of sympathy with her people. Here is a document of overwhelming importance to every inhabitant of India, yet it was obviously drawn up without the faintest regard to its effect upon the millions in that country, but only with

an eye to a handful of disgruntled Conservative politicians and a few retired and senile Officials. The most powerful factor in present-day Indian politics is distrust of British intentions, the fear—well justified by many incidents in the past—that the Government of India will, in Lord Lytton's phrase of fifty years ago, 'take every means in their power of breaking to the heart the words of promise they had uttered to the ear'. In order to placate a few Englishmen nothing has been done to dispel this fear. The date of inaugurating the new constitution is always held to be a vital point, but it is left dependent upon such uncertain factors as the 'successful' working of a reserve bank which has still to be founded, and the restoration of 'India's normal export surplus'. The insistence upon half the States joining the Federation also suggests to Indian minds the possibility of delay and intrigue. The drafting of the White Paper with the primary object of satisfying Conservative elements in England has led to an absurd over-emphasis upon the question of 'safeguards' and to an ambiguity which can only be intentional".

CHAPTER EIGHTEEN

JOINT PARLIAMENTARY COMMITTEE ON REFORMS

Early in April 1933, Parliament appointed a Joint Select Committee consisting of sixteen members from each House. The members of the House of Commons were: Sir Samuel Hoare, Mr. R. A. Butler, Sir John Simon, Mr. J. C. C. Davidson, Sir Austen Chamberlain, Lord Eustace Percy, Lord Winterton, Sir Reginald Craddock, Sir Joseph Nall, Major Edward Cadogan, Miss Mary Pickford, Sir J. Wardlaw-Milne, Mr. Isaac Foot, Mr. Attlee, Mr. Morgan Jones, and Mr. Seymour Cocks. The representatives of the House of Lords were: The Archbishop of Canterbury, the Lord Chancellor, Lords Burnham, Derby, Irwin, Hardinge, Hutchinson, Linlithgow, Lothian, Lytton, Peel, Rankeillour, Reading, Salisbury, Snell, and Zetland.

On this occasion, debates on the Indian constitutional issue were raised in both Houses. The opposition was led by Mr. Winston Churchill and Sir Henry Page-Croft in the Commons and by Lord Lloyd and Lord Halsbury in the Lords. The amendment to reduce the Commons' section of the Committee from 16 to 12 was rejected by 209 votes to 118, the smallest majority the Government had in any important division during the session. Even those who supported the Government adopted the position that the White Paper policy represented the furthest advance for the time being.

Lord Linlithgow, who had been President of the Royal Commission on Agriculture in India (1928), was elected Chairman of the Committee at its first meeting

(12 April). The Committee at the same meeting approved of the list of "assessors" from India who were to sit with them, and discussed the conditions upon which evidence was to be taken from various bodies and individuals. The assessors were neither entitled to vote on any issue, nor were they to submit any report to Parliament. The Indian delegates who acted as assessors to the Parliamentary Committee included Sir Tej Bahadur Sapru, H. H. the Aga Khan, Sir Hari Singh Gour, Sir Abdur Rahim, Sir Mirza Ismail, Sir Akbar Hydari, Sir Manubhai Mehta. Messrs. M. R. Jayakar, A. Rangaswami Iyengar, Y. Thombare and Zafarulla Khan, Dr. B. R. Ambedkar, Sir Phiroze Setlna, Sir Hubert Carr, Lt. Col. Sir H. Gidney, Mr. N. M. Joshi, Dr. Shafaat Ahmad Khan, and Sardar Buta Singh. The sittings of the Joint Select Committee, with the Indian assessors collaborating, commenced from the 10th May.

The Princes' Memorandum

A number of memoranda were presented to the Committee. One of the earliest of these was the Princes' memorandum. It demanded that such of the princes as desired to come into the Federation through a Confederation should be allowed that liberty. Mr. Maqbul Muhammad stated, on behalf of the Standing Committee of the Chamber of Princes, that 40 out of 199 members of the Chamber had already signified their intention to join such a confederation. The memorandum also claimed that whatever be the number of States that will join the Federation, they should be allowed the full quota of seats reserved for all the Indian States. It urged that under no circumstances should the States be liable to direct taxation, and that the Federal Senate shall enjoy equal powers with the Assembly, including the power of the purse. Mr. Panikkar, however, said during cross-examination that some of the new claims were for purposes of bargaining and

that it should not be understood that the adhesion of the Princes to the Federation would depend on their securing them.[1]

Mr. Sachchidananda Sinha's Evidence

Mr. Sachchidananda Sinha, former minister and member of the executive council of Bihar and Orissa, in his evidence (22 June) presented the point of view of progressive opinion in India. He emphasised that the White Paper proposals had failed to satisfy Indian opinion regarding the sincerity of Britain in implementing her past pledges and declarations and referred to the condemnatory resolutions and discussions in the Central and Provincial legislatures. In explaining his description of the White Paper proposals on an earlier occasion, as a political imposture, he observed that this was so because though proposing to offer self-government on India, it offered nothing like it in actual fact.

Mr. Sinha further said that the view was widely held, even in Moderate political circles in India, that the present constitution would be preferable to the White Paper proposals, and that large and substantial alterations could alone satisfy reasonable men in India and make them agree to work the new constitution. He further wanted that the States should, in the first instance, be allowed one year for coming into the federation, the Crown being empowered to extend the period by another year, if need be; and that the proposed condition of a Joint Address by both Houses of Parliament to the Crown be omitted. Two other serious

1 "By excluding paramountcy from the purview of the Federal Government and by reserving the right to nominate their representatives to the federal Chambers and reserving also the liberty to join the federation in only such matters as each Prince thought fit, the Princes have safeguarded, nay, more than safeguarded, their special rights of sovereignty and the integrity of their dynasties and the character of their administrations. Is it necessary to go further and deliberately weaken the federation?" —*The Servant of India* (June 29, 1933).

defects of the proposals, in Mr. Sinha's opinion, were the absence of any provision for the automatic elevation of India to the status of a Dominion by providing for a time-limit to the period of transition, and of any clause prohibiting the States' representatives to participate in purely British Indian matters. Regarding the provinces, Mr. Sinha not only expressed his strong opposition to the comprehensive special powers of the Governor but also to the creation of a second chamber

The Services' Demands

Members of the Indian Civil Service and other services also presented their case before the Committee. The demands put forward by them were in the main for the safeguarding of their privileges. The Indian Civil Service Association, for instance, suggested that promotions, transfers and postings should be placed before the Governor personally by an officer of the rank of a Chief Secretary, that in cases of a public enquiry into the conduct of a Civil Servant a Minister should obtain the personal concurrence of the Governor to the personnel of the Committee. It further demanded that the "accruing rights" of the members of the Civil Service should be protected. Thus the abolition of the post of Commissioners would be impossible for at least 35 years.[2] This was a demand which, the representatives of the

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2 *Mr. Zafarulla Khan*: "So that during the next 35 years, according to you, even though there may be less work for a certain class of officers, if the post has been preserved for the Indian Civil Service officers, there can be no financial relief to the provincial or central exchequer as a result of the reduction of the post."

Witness: Yes, that is so.

Sir Samuel Hoare replying to a question (11,293) by the Archbishop of Canterbury observed: "We have found the more we have gone to the question the more difficult it is to define an accruing right, and it is essentially a question upon which a measure of discretion must be left to somebody. . . . . Supposing a particular post—one of very many—was abolished in the administration of India for this reason or another; the effect that the abolition of one post might have upon the great body of Indian Civilians would be so insignificant as to be almost indefinable. If, however, a whole class of posts were abolished, to which in the ordinary course a civilian might look forward for promotion,

Services admitted, would enlarge their rights beyond what was at present interpreted as the existing and accruing rights by the Law officers of the Crown. The Association was not satisfied by the mere provision that salaries and pensions payable to the superior services or to their dependents would continue to be non-votable, but it also demanded that large funds should be invested in sterling to secure the payments.

Besides, evidence was also tendered notably by Mr. Winston Churchill, Col. Josiah Wedgwood and Sir Michael O'Dwyer, opposing the White Paper proposals. Further, representations were submitted on behalf of numerous sectional bodies. Sir Charles Innes, ex-Governor of Burma, also gave his evidence supporting the White Paper proposals.

Memorandum on Federal Finance

Early in July a Financial memorandum prepared by Sir Malcolm Hailey was issued under the authority of the Secretary of State. The memorandum is divided into three parts. The first two parts deal with the financial implications of provincial autonomy and Federation respectively. The third part puts into the form of figures the results of the White Paper proposals.

Sir Malcolm Hailey in approaching the problem bases himself not on the financial results of some supposed normal times, but on the actual conditions as reflected in the central and the provincial budgets for the current year. In discussing the implications of provincial autonomy Sir Malcolm puts forward three clear objectives: (1) to provide the Centre with secure means of meeting normal demands together with a small reserve; (2) to secure to the Provinces at least the amounts that are now

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then I think it might be argued that the careers of certain officials have definitely been injured. Holding that view, we propose that a discretion should be left for the compensation of accruing rights and that that discretion should be left to the Secretary of State".

available to them, to meet deficits in certain provinces and to provide for the creation of new provinces; and (3) to provide that the main benefits of future improvements in Central Finance will accrue to the Provinces.

With regard to Central finances, Sir M. Hailey points out that with substantial retrenchment in the Defence Services and emergency cuts in salaries accompanied by heavy surcharges on Income-Tax and Customs Duties the budget just balances itself at present. The conclusion is, therefore, reached that the Centre can not at present afford to part with any of the sources available to it and the process of economic recovery must proceed far before the Centre can find any surplus sums for the use of Provincial Governments. It is also pointed out that barring the excise duty on matches, which would yield an annual revenue of Rs. 2½ crores, no immediately reliable sources of revenue can be detected in any other direction. It is difficult to adjudge between the conflicting claims of various Provincial Governments and that in any case the narrow range of finance available leaves no alternative to proceeding on conditions as they exist at present. This leaves, as the only basis of looking at future arrangements, the proposition that the position of no Province should be worsened under the new arrangements. The only problems, therefore, that can be and have to be immediately tackled in the domain of Provincial Finance are, in the opinion of Sir Malcolm, those of meeting the huge deficits of certain Provinces, notably Bengal, and of providing for the creation of new Provinces.

The Memorandum states that the special costs of the new Federal machinery as such would not be considerable, the total additional costs of the Federal Legislature and the Federal Court being calculated at between Rs. 2½ crores to Rs. 3¼ crores. The extinction of tribute, etc., will not add largely to this figure. It is further pointed out that the future Central income being all Federal, the States may also scrutinise with some care the programme of the future alienation of Central revenues in favour of the Provinces and the

authority that is to determine when such alienation shall take place.

The cost of a new and enlarged constitutional machinery is put at roughly one crore of rupees. The alienation of 50 p.c. of the Income-tax will mean a cost of Rs. 5¼ crores and the settlement of the States' excess contributions, Rs. 1 crore. Loss of profit in currency management, etc., as a result of its division for the purpose of the establishment of the reserves of the Reserve Bank is estimated at Rs. 1 crore and the cost of the separation of Burma to the Indian Central revenue at Rs. 3 crores.

Sir Samuel Hoare's statement on this memorandum contains a useful summary analysis of the figures presented by Sir Malcolm Hailey. He points out that these deficits are due mainly to the separation of Burma, to the creation of new provinces and to putting a stop to the permanent deficits in Bengal and Assam. The creation of the Reserve Bank will also entail a temporary addition to the deficit but the only actual fresh expenditure will be about a crore of rupees for the setting up of a new constitutional machinery, etc. in the Provinces and the Centre. Sir Samuel Hoare emphasises the point that the greater part of these Rs. 6 to 8 crores is needed anyhow, whether constitutional changes are made or not.

The Secretary of State's Evidence

An important part of the proceedings of the Joint Select Committee is the evidence of the Secretary of State. This rather unusual step has helped in making the intentions of the Government clear before the Committee and the Indian assessors. He appeared before the Committee

assisted by Sir Malcolm Hailey, Sir Findlater Stewart and Sir John Kerr. He answered 15,776 questions. His evidence extended over a fortnight before the Committee adjourned in August. The examination was continued between October 3 to November 7, after the Committee reassembled.[3]

At an earlier stage of the proceedings Sir Tej Bahadur Sapru vehemently protested against attempts to whittle down the pledges promising Dominion Status; he even threatened to disinterest himself from the entire constitutional proposals. In reply to a question by Sir Tej enquiring whether the Government stood by Lord Irwin's declaration, Sir Samuel said: "Certainly so, subject to the declarations that accompanied it at the time". Lord Irwin immediately added that what he had declared in 1929 referred to the goal. At a later stage Sir Samuel said that the White Paper proposals were neither the ultimate nor even the penultimate step towards Dominion Status.

Regarding the ten seats in the Upper Federal Chamber left open to nomination by the Governor-General, it was elicited that four would go to the States and the rest would be so distributed among the different communities of British India as not to disturb the communal balance. Sir Samuel Hoare also said that such nominated members would be eligible to become Ministers.

Referring to a memorandum submitted by Mr. A. Rangaswami Iyengar on the transitory period, Sir Samuel tried to remove certain apprehensions. He said: "Our intention is to make only such changes in the Central Government during the transitory period as will ensure the autonomous provinces having full opportunity for developing their autonomy. We, therefore, propose that within those conditions the Viceroy's Council would continue. Obviously, it would be subject to alteration, both in duties as well as in personnel, but . . . . we should go with the Central Government as nearly what it is now, as it could be".

What emerged from Sir Samuel's evidence, if liberally

[3] When the adjourned session met, some of the members of the Indian side, including Sir Tej Bahadur did not attend.

interpreted, may be summarised as follows: The Cabinet is prepared to regard Dominion Status as the ultimate and natural end of the present constitutional proposals, which they regard as transitional and as leading gradually to a larger growth in the direction desired by Indian nationalists; that the constitution should incorporate constituent powers for the new Indian Legislature within certain defined limits, and enabling the Federal Legislature within those limits to make the necessary changes; and that the difference in time between the establishment of provincial autonomy and the introduction of the principle of responsibility in the Federal sphere should be as short as possible; that the transitional changes for the period intervening between the two should be relatively small; and that every possible endeavour should be made to overcome the difficulties and obstacles at present standing in the way of the establishment of Federation. He also said that it was the Government's desire to clear up without undue delay the two main interconnected factors of uncertainty, *viz.*, the accession of the required minimum of States to the Federation and the financial considerations enshrouding alike provincial autonomy and federal central responsibility.

Memoranda by Indian Delegates

The trend of evidence before the Joint Parliamentary Committee along with the powerful campaign organised in England against the adoption of any liberal measure of constitutional reforms, gave rise to considerable disquiet even amongst those belonging to the moderate school of political thought. The British Indian Delegation presented a joint memorandum for submission to Parliament, at the end of the Committee's deliberations. This memorandum

is signed by all British Indian Delegates present at the last sittings of the Committee except Sir Hubert Carr. The memorandum suggests that certain essential modifications of the White Paper proposals must be made in order to satisfy moderate opinion in India. It particularly emphasises that Indians must be assured that the reserved powers will be so framed and exercised as not to prejudice India's advance to full responsibility.

Sir Tej Bahadur Sapru in a separate memorandum explains his position in relation to the White Paper, and names five essentials to meet the situation, namely :

(1) Central Responsibility with safeguards which are necessary in India's intersts, for the transitional period; (2) Provincial Autonomy on similar terms; (3) Reserved subjects to be controlled by the Governor-General only for the period of transition which should not be long or indefinite; (4) the adoption of a definite policy to facilitate the early transfer of the Reserved Departments; (5) a statutory declaration on India's Constitutional position in the British Commonwealth.

Sir Tej Bahadur Sapru's memorandum is supported by Messrs. Jayakar, Rangaswami Iyengar and Joshi. Mr. Joshi, in a separate note, deals specially with labour and pleads for the democratization of the Constitution.

Sir Akbar Hydari, giving his views on Federation and the White Paper, says that Hyderabad's object has always been, whilst preserving the sovereignty of the Nizam, to co-operate in furthering the interests of political development of India under the ægis of the Crown. He expresses the opinion that the object can be achieved, perhaps can only be achieved, by Federation, on the lines discussed during the last three years, provided certain fundamental conditions are satisfied.

Sir Manubhai Mehta deals with the States' objections to direct taxation, and also gives the States' views on constituent powers.

The case for adequate representation of women is argued by Begum Shah Nawaz, while Mr. A. H. Ghuznavi draws attention to Bengal Moslems' concern at the attempts to alter the Communal Award, and urges that the whole jute export duty should ultimately be assigned to Bengal.

Sir Hubert Carr, in a note, deals with a number of questions specially affecting the British community and says, with reference to the British Indian Memorandum, that he agrees with much in it and sympathizes with his fellow delegates' angle of vision.

Reactions in India

Prominent Indian publicmen have initiated a movement demanding a thorough modification of the White Paper proposals by the British Government.[4] An agreed demand by all prominent parties in India assembled at an All Parties Conference has been suggested for this purpose. A manifesto issued by the Servants of India Society in December 1933, states:

"During the last few weeks, particularly since the return of the Indian delegates to India and since the Poona Conference, there has been a growing feeling that without vigorous, sustained and widespread constitutional agitation there is no hope of securing any improvement in the scheme of constitutional reform adumbrated in the White Paper.

"There are many improvements which Indian opinion unanimously demands in the scheme and without which even the most moderate elements in the country will not be satisfied.

4 The Liberal Federation at their annual Conference at Calcutta in 1932, over which Dewan Bahadur Ramachandra Rao presided, and again at the last session at Madras in December 1933, under the presidency of Mr. J. N. Basu, recorded their emphatic protest against the proposals contained in the White Paper. Similar, and in some cases more vigorous protests have been made by numerous public bodies in India.

MINIMUM DEMANDS

"The following are some of the points which should be pressed on the attention of the authorities for acceptance :

(1) Dominion status for India should be clearly and in so many words acknowledged in the scheme as the goal of India and a reasonable time-limit inserted for attainment.

(2) Representatives of the Indian States should be elected and not nominated by the Princes.

(3) Paramountcy should be a Federal and not a Crown subject.

(4) Fundamental rights should be equally guaranteed to the citizens of the Indian States as to those of British India.

(5) Central responsibility should be granted with or without Federation.

(6) The Upper Chamber of the Central Legislature should be analogous to the House of Lords in the matter of its powers.

(7) The Federal Court should have jurisdiction in all Federal matters both for British India and the Indian States.

(8) Financial and commercial safeguards as well as special responsibilities for Governors and the Governor-General apart from emergency powers should be eliminated or severely restricted.

(9) The Indian Army should be nationalised within a period to be stipulated in the Statute.

(10) There should be a definite measure of effective civil control over military expenditure even during the transitional period

(11) Control over the Services should vest in the Federal and Provincial Governments.

(12) Power to amend the constitution should vest in the Legislature in India.

(13) There should be no second chambers in the provinces and non-elected members should not be appointed as ministers."

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